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TIME, TECHNOLOGY, AND THE CREATIVE SPIRIT IN POLITICAL SCIENCE [1]

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I

Let us transport ourselves for a moment on the magic carpet of fancy to the year 1783 that saw the formal close of the war for independence, and listen to a few passages from an imaginary lecture delivered by a prescient professor of moral and natural philosophy in an unnamed American college to a group of boys preparing themselves for labor, achievement, and destiny in the republic so recently ushered into a chilly and doubting world.

"Young gentlemen: You who hear my voice, if you cross the normal span of life, will be living when the first quarter of the nineteenth century has turned. Those among you who are blessed with the four score years of the Scriptures will approach the borders of the mid-century before the long night falls upon your path. Your children, who will learn their early lessons and derive their bias from your instruction, will be among the citizens who govern the country in 1850, and your grandchildren will face with dimming eyes the dawn of the twentieth century. These facts, we might say, to anticipate the language of a coming philosopher in this ancient college, are 'stubborn and irreducible.'

"Since this is so, it becomes my duty," continues the imaginary lecturer, "to prepare you and those who will learn directly from you—as far as lies within my power—for the stern business

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of dealing with the realities that lie ahead—realities that will come down upon you like doom, twist and turn as you may. For the future is as real as the past and is your heritage. Having lived through a tempestuous and revolutionary period ourselves and having just won our independence from the most puissant empire in the world, breaking with the might of General Washington's army the legalities of the colonial age, we are now prepared to consider the future with more flexibility of spirit than our immediate ancestors.

"Therefore, young gentlemen, I venture to look down the coming years to see whether I can discern, amid the shadows, some of the fateful things with which you and your children and your children's children must wrestle.

"First of all, I discover that the present system of government, the Articles of Confederation, will be overthrown, not by mere amendment in accordance with the express stipulations of the existing law, but by a convention appealing over the heads of the Congress and the state legislatures to the people in a grand referendum; and instead of the existing order there will be established a Constitution founded on different principles and directed to different economic ends.

"In the next place, I prophesy the complete abolition of the present property qualifications on the right to vote and hold office—qualifications approved by our fathers as absolutely essential to the safety of the state—and the substitution of the principle that every adult male citizen, no matter how poor in earthly goods, shall have the right to vote. Nay, more, and I beg you to refrain from any unseemly demonstrations, I predict that the time will come when women as well as men will have the precious privilege of voting and holding office! The high quality of your laughter is a tribute to your geniality.

"And now, if the young gentlemen in the class who are preparing for the ministry will permit, I discover in my horoscope the disestablishment of the Congregational Churches in Massachusetts—indeed of all churches everywhere—and the practical abandonment of religious limitations on the suffrage and office holding. The time will come when even our sister commonwealth

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of South Carolina will cease to rely on fear of hell as a sanction for morality, political and civil.

"Moving forward into the middle of the nineteenth century, I find according to my auspices a terrible social war in which the institution of chattel slavery is abolished by a dictatorial act of military power worthy of Caesar; and a revolution made in the Constitution soon to be substituted for the Articles of Confederation—a revolution subjecting all states, towns, villages, counties, and cities in all matters pertaining to life and property to the judgment of five gentlemen learned in the law at the new national capital, wherever that may be.

"Going on, I see the election of federal Senators, safely entrusted to state legislatures, wrested from those bodies and thrown to the tender mercies of the populace. Beyond that, I find grievous taxes laid upon incomes, inheritances, and business profits, rising progressively to staggering percentages, and the vicious principle adopted of discriminating between wealth earned and wealth unearned—as if that distinction could be made without denying the very basis of property right. That is not all. I see flaming in the letters of the statute books declarations that the rich may be taxed to educate the poor, to reduce interest rates on farm mortgages, to provide hospitals for the improvident, and innumerable conveniences free of charge for the commonalty.

"Leaving aside, in the hurry of the hour, a hundred other innovations never dreamt of by our thoughtful and thrifty fathers —innovations which make the claims of our restless western neighbors now gathering under the banner of that modern Tiberius Gracchus, Daniel Shays, seem moderate by comparison; I say, leaving these aside for the moment, I venture to suggest that the steam engine so recently patented by James Watt and the spinning machinery contributed by Crompton and Arkwright in England will completely destroy the industry and agriculture by which we now live, introduce a machine régime, and open before humanity the possibility of an indefinite increase in the necessities, comforts, conveniences, and luxuries of life, bringing upon us the fateful doom of a levelling social democracy. With respect to this prognostication, I venture to say that it will be

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more revolutionary in its effect upon social orders and political opinions than all of the cataclysms that lie behind us taken together.

"Now, gentlemen, I can see by the amazement, incredulity, and scorn in your countenances that my discourse has been by no means pleasing; and I expect to receive letters from your angry fathers very soon denouncing me for suggesting that the perfect world in which we find ourselves this beautiful December day will be turned upside down by this and coming generations. But I beg of you to pause a moment and ask yourselves how I can discharge my duty of preparing you for the coming realities of life if I make no reference to what I imagine those coming realities will be? Anyway, such is my view and those who wish to confute it have a free forum.

"Finally, I would add that, distasteful as many of the impending changes promise to be, I am constrained by my faith in the wisdom and beneficence of Almighty God to suppose that His ways are slightly more important than mine, to speak modestly, and that perhaps it may be as useful to work with Him as against Him. Yet I would not have any of my moralisings obscure the stubborn and inexorable facts that loom large on the horizon of the future."

Returning to earth on our magic carpet, may we not, without claiming any of the prescience of our distant professor, venture now and then to turn our faces from the dead past and the fleeing present to the indubitable future? Can those who teach and write to-day honestly avoid the challenging fact that their students must work in the substance of the approaching years, not in the ashes of the yesterday? Since the answer is a Draconian affirmative, then what of the hour?

It is not, of course, given to any of us to discharge successfully the rôle of a prophet, but unless science and the scientific method are jokes, then at least we ought to be able to get ourselves into a receptive frame of mind with respect to the decades and centuries lying before us. Certainly two things in "the intellectual climate" in which we work thrust themselves upon us with sovereign

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exigence. The first is the pitiless reality of the time-sense, the consciousness of an irresistible flow of seconds, hours, days, years, and centuries—to which is now coupled that fruitful eighteenth-century concept, the idea of indefinite progress—the continuous conquest of material environment by applied science.

Beyond all doubt, this is one of the striking mind-phenomena of the modern age and the Western world. Unquestionably Oswald Spengler is right in laying emphasis upon that commonplace but revolutionary device created by Western Europe, separating it from antiquity and the Orient—the clock, with its moving hands and its relentless bell tolling out the hours of man's little span, joining the point-moments of the future and the past in an infinite relation, and giving to the masses that live under its endless monody a time-sense utterly incompatible with the fixed destiny of the ancient Egyptians and the modern Orientals —before the Western invasion of the Far East. Unsparing time, that is the measureless arc under which we labor, think, and teach.

Not one whit less inflexible is technology—also a modern and Western Leviathan. Like time, it devours the old. Ever fed by the irrepressible curiosity of the scientist and inventor, stimulated by the unfailing acquisitive passion—that passion which will outlive capitalism as we know it and all other systems now imagined by dreamers—technology marches in seven-league boots from one ruthless, revolutionary conquest to another, tearing down old factories and industries, flinging up new processes with terrifying rapidity, and offering for the first time in history the possibility of realizing the idea of progress so brilliantly sketched by Abbé de Saint-Pierre at the opening of the eighteenth century.

Under the convulsive pressures of technology pouring through time, turning social orders into ever-new kaleidoscopic patterns, all thought, all policies, and all actions in the sphere of statecraft —political science—must be formulated unless, forsooth, we are to resort to utopias and academic sterilities. This, it seems to me, is the most fundamental fact of our discipline. By what methods, then, can those among us who desire to labor at the hazardous business of trying to think hope to bring our flow of consciousness

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into such intimate relation with the world stream that we may, by creative effort, better help to prepare our students—and through them the nation—for its destiny? Somewhere near this intellectual target we must shoot unless we prefer to play safe with myopic research into the unimportant and with descriptive studies of a buried past.

II

But with respect to creative work in this relation we carry on our backs a heavy burden of acquired rights and servitudes. In the United States political science has too long been a household drudge for lawyers—political lawyers at that. In a large measure, the printed subject matter of our discipline—at all events the part most easily accumulated and exploited—is composed of statutes, ordinances, decrees, and judicial decisions—often shadowy reflections of the stern realities of life. Now of all brain workers, except perhaps the bureaucrats, the lawyer is the closest slave of precedent. Of necessity this is so, for were he to cut loose from set patterns, the lawyer would be lost, with what effect upon justice as distinguished from judicial determination, I shall not venture to say. At all events, while time and technology ever stream forward, the lawyer is always looking backward to see what his predecessors said and did. Even when he finds it necessary under the stress of novel contingencies to reverse himself, the lawyer must twist his new emotions to fit the rhetorical mould of some historic symbols.

The second great incubus carried by political science, making the business of creative thinking difficult, is the baggage provided by the professional historian. Even more intently than the lawyer, and with less personal interest in the pulsating substance of life, the historian looks backward. However great his services in the preservation of national memorials, the historian makes few weighty contributions to political science. In mortal fright lest he should be wrong about something, he shrinks from any interpretation—from the task of seeking any clue to what William James called the big, buzzing, booming confusion of this universe.

Indeed the historian proudly tells us that he has nothing to do with interpretation, that he deals only with indubitable facts,

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with things as they actually were. Unquestionably, good work has been done under that inspiration, but we should not be deceived. The historian himself knows, on sober thought, that with reference to any theme of any importance, he does not present all the facts, no matter how minute his analysis, but in truth selects a few from the multitudes that have by chance merely found a pale record on the pages of the books and manuscripts and papers that have escaped the ravages of time. And any selection, except one made by lot, is an interpretation, no matter how vehemently the historian protests his innocence of ideas. More than that, the very denial of any desire to interpret is perhaps the most profound interpretation of all—namely, a confession that there is not even a discoverable fringe of order in the universe, that anarchy is the name for the chaos; that, for example, a Wall Street lawyer like Alexander Hamilton might very well have been the leader of Jefferson's agricultural interest and that the Virginia planter might very well have headed the party of fiscal prowess. More than thirty years ago, Henry Adams begged the historians in his presidential letter to have a care for perils inherent in the philosophy of Alice in Wonderland, but without any appreciable effect upon their conduct.

Besides the impedimenta which lawyers and historians have thrown in the way of connecting political science with the flowing stream of time and technology, the circumstances of academic life in America have not made for venturesome explorations, with their terrible risks of error, failure, ridicule, and futility. Though time and technology are remorseless, as Matthew Arnold said of thought, sapping institutions and resting on that which is eternal, colleges and universities are essentially conservative. Our supervising trustees are business men to whom orders for goods in hand and in sight and the next dividend date are realities more vivid than the onrushing stream of years that devours us all, or they are political appointees, living or moribund, no less poignantly concerned about the day's grist.

Given these invincible circumstances, college presidents, when searching for funds to sustain their institutions, must move respectfully among business men and transitory politicians.

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Hence for all executives of the higher learning "safety first" is the most effective battle slogan—safety first with reference to the instant need of things, not the long view. And a college professor who is disloyal to the complex that supports him is supposed to be lacking in the qualities of a gentleman—and in a sense is wanting in those very characteristics.

Then to this general environment of circumspection are added several academic usages detrimental to creative thinking. First of all is the weight of teaching hours—the absence of generous economic support for political science. In natural science there are many research professorships practically freed from class-room routine and well supplied with huge buildings and laboratories; but to the professor of political science we assign from eight to twenty hours teaching a week and money enough to buy a few dog-eared textbooks. It does not appear in the records that any college or university in the country gives its instructors in government either the leisure or the money necessary to travel and observe political institutions at work in all parts of the earth. Finally, we seldom promote a lively young instructor to a position of comfort and financial ease until he has crippled his mind by writing text-books acceptable to the president and trustees or has grown so old that the fiery hopes of youth out of which the future is made have died down into the dull embers of reminiscence.

The fourth great menace to creative thought in America today is research as generally praised and patronized, the peril of substituting monoculous inquiries for venturesome judgments, the peril of narrowing the vision while accumulating information. Research in detailed problems with reference to specific practical ends no doubt produces significant results—findings of the highest value to practitioners, and are to be commended and supported more generously than ever; but still with respect to large matters of policy and insight there are dangers in overemphasis.

In the first place, by making success in some minute and unimportant academic study the gateway of admission to the profession, we admit to our fellowship students with no claims

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whatever to capacity for independent thought, venturesome exploration, or stimulating speculation. In the second place, research under scientific formulas in things mathematically measurable or logically describable leaves untouched a vast array of driving social forces for which such words as conviction, faith, hope, loyalty, and destiny are pale symbols—yielding to the analysis of no systematist. In the third place, too much stress on the inductive method of minute research discourages the use of that equally necessary method—the deductive and imaginative process which often makes the poet or artist a better fore-teller and statesman than the logical master of detail and commonsense.

Nor are these contentions without practical illustration. Certainly it will be admitted that Germany before 1914 was the country in which microscopic research was carried to the greatest lengths—certainly far beyond the confines reached by England and France—and yet with all their high practical knowledge and terrific organizing power German statesmen were beaten by imponderables that escaped doctors of philosophy.

Now, if perchance anyone is inclined to think these reflections on our creative capacities unwarranted, I venture to ask him whether, with the possible exception of John Taylor's monumental *Inquiry*, a single immortal work in political science has been written in America since Hamilton, Jay, and Madison struck off from the flaming forge of controversy the enduring philippic that bears the title of *The Federalist?*

III

If my thesis is right, namely, that time and technology move relentlessly upon all mankind and all institutions, and my antithesis is correct, namely, that the conditions pertinent to creative thought in American academic life run against, not with, the constructive imagination necessary for any harmonious adjustment of humanity to its destiny, then we may well say: What is the upshot? That is, of course, a deadly question; for, resorting to the language of metaphysics, we do not know whether man, long the victim of natural forces and many delusions, can emanci-

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pate himself from the involution of life and environment that produced him and assume the Jovian rôle of interpreter and director. But, perhaps, it will not be amiss to bring together in a kind of mosaic some of the ideas that lie scattered in broken fragments in the path of experience.

First of all, it seems to me that the intellectual climate in which we work can be profoundly altered by the very recognition of its factors. For example, if, instead of abusing college trustees and presidents after the fashion of Mr. Upton Sinclair, we frankly invite them to take note of their operating defence mechanisms, we may do more to change the spirit of the academic world than by preaching heavy sermons on the logic of academic freedom. No doubt a little whole-souled laughter, even when conferring honorary degrees, would help loosen up the mental lattice work through which we peer.

Then we might learn something pertinent by a study of the factors that have entered into the personality of each great thinker in our field. By common consent, are not Aristotle, Machiavelli, and the authors of *The Federalist* giants? Though some would admit other philosophers to this formidable group, none will deny to these a place of preëminence. And the significant thing in relation to the present argument is that every one of these creative workers acquired his knowledge and insight not only through books, but also through first-hand contact with government as a going concern. In any case, none of them wrote with an eye on a committee of the trustees on salaries, promôtions, and pensions. In the course of observant experience supplemented by historical inquiry they all penetrated to the substance of politics; and it may well be doubted whether, apart from contributions to administrative and operating detail, there has been any substantial addition to the body of principles enunciated by these formidable forerunners.

From cognate sciences also we may learn something of advantage to us in the quest for the methods of more creative thinking. No small part of our intellectual sterility, as already indicated, may be attributed to the intense specialization that has accompanied over-emphasis in research. Certainly nothing is truer

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than Buckle's profound generalization to the effect that the philosophy of any science is not at its center but on its periphery where it impinges upon all other sciences. If we could early insert that devastating concept into the minds of our callow young novitiates, we should do more to break their intellectual hobbles than by requiring at their hands ten years' research on the statute of mortmain or the derivative features of Rousseau's political philosophy. Particularly can we fertilize political science by a closer affiliation with the economists, who now seem to have cast off their Manchester dogmas and laid their minds alongside the changing processes of production and distribution.

Finally, what hope lies anywhere save in the widest freedom to inquire and expound—always with respect to the rights and opinions of others? As my friend James Harvey Robinson once remarked, the conservative who imagines that things will never change is always wrong; the radical is nearly always wrong, too, but he does incur some slight risk of being right in his guess as to the direction of evolution. It is in silence, denial, evasion, and suppression that danger really lies, not in open and free analysis and discussion. Surely if any political lesson is taught by the marvelous history of English-speaking peoples it is this. And yet everywhere there seems to be a fear of reliance upon that ancient device so gloriously celebrated by John Milton three hundred years ago—the device of unlimited inquiry. Let us put aside resolutely that great fright, tenderly and without malice, daring to be wrong in something important rather than right in some meticulous banality, fearing no evil while the mind is free to search, imagine, and conclude, inviting our countrymen to try other instruments than coercion and suppression in the effort to meet destiny with triumph, genially suspecting that no creed yet calendered in the annals of politics mirrors the doomful possibilities of infinity.

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THE POLITICAL IDEAS OF CONTEMPORARY TORY DEMOCRACY

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The most significant political phenomena of post-war Britain are the emergence of the Labor party and the slow extinction of the Liberal party. The Labor party has emerged as the expression of a demand on the part of the wage-earners for an alteration of the basis of property. The Liberal party has suffered an eclipse because its historic mission has been achieved. The rising industrial classes which it represented for a century have now arrived. Whatever difference may still exist between the interests that were heretofore represented primarily by the Liberal party and those that were represented by the Tory party shrinks into insignificance as compared with the common interests of all the dominant elements against the radical demands of Labor. Thus Toryism and Labor alone will apparently share between them the future destinies of Britain. One will offer largely a brief for the claims of the past; the other will present in the main the demands of the future. The traditional British two-party alignment promises henceforth to be a struggle between Toryism and Labor, and to be marked by the intensity and animosity characteristic of a political division that comes dangerously near to being a clash of economic classes.[1]

However, even as the party of stability the Tory party cannot, whether in the interest of morals or of strategy, afford to offer a purely negative policy. The problem which Tory politicians thus face is how to retain the present economic and political arrangement and still hold the confidence of the bulk of a wage-earning electorate. Mere appeal to the vested rights of property or to the immemorial sanctities of the British constitution is insufficient. To thrive, the Tory party must make a positive effort to meet in some degree the demands of Labor. Only then will it be

[1] Thus the general election of 1924 was especially bitter and violent.

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able to turn the flank of radicalism. It must pay a price—the price which privilege must commonly pay to discontent. It must, for instance, not merely resist the demand for nationalization of the mines but also show concretely how private ownership of the mines can be made to square with the insistence of the miners on decent wages and on participation in management. It must also attempt to offer a positive remedy for the problems of housing and unemployment. Whether for the sake of strategy or of principle, the policy of the party must be both concrete and popular.

This task of reorienting Tory policy in accordance with the demands of our age and thus bridging the gap between the old and the new, a number of Tory politicians and publicists have actively taken in hand. They are the Tory Democrats, the professed followers of Disraeli.[2] They do not, of course, accept Disraeli's notion of invigorating and popularizing the monarchy and the territorial aristocracy, but they reaffirm his emphasis on the necessity of alleviating the condition of the masses. Their task, however, is more complex than that which faced their master. It was not difficult for Disraeli to win the workers to his party, for by tradition and association the Tories could with some justice claim to have shown greater concern for the masses than their rivals, the Liberals. Now, however, his disciples must aim at retaining the allegiance of the propertyless masses in the face of the claims of a new party which is in itself the avowed expression of the political solidarity of the masses. Their position is thus not enviable, for, roughly, their policy must, if it is to succeed, make the historic defences of Toryism compatible with vital reconstruction. Their goal must be to make the present economic and political arrangement less vulnerable to the attack of the Socialist.

It is obviously futile to search for a systematic theory of politics in parliamentary speeches, in articles written for periodicals, and in pamphlets and books that are written for the moment. Tory

[2] For a history of Tory Democracy see William J. Wilkinson, *Tory Democracy* (New York, 1925). Lord Henry Cavendish-Bentinck, *Tory Democracy* (London, 1918), is also useful.

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Democracy is not a philosophic creed; there are no political philosophers among its adherents. These writers do not form a school of thought and they disagree among themselves on important details. They merely restate in more general terms the issues of our day, and the present attempt to set forth their ideas in more logical manner may conceal the fragmentary nature of their writings. Tory Democracy is rather a tendency, an atmosphere, a leaven working within the Tory party. Yet the efforts of the writers in mind are of interest; for what they want in precision they more than make up in zeal and intensity, and their lack of finish is balanced by the closeness of their ideas to the vital issues of the day. Their ideas are always vividly presented, and their underlying assumptions, while frequently not fully analyzed, are never difficult to discern. An analysis of their views will give us the ideas of the more liberal defenders of the present political and economic organization.

As a rule, the Tory Democrats begin their analysis with a defense of the present régime against the criticism of the Socialists, and then end with suggestion of reforms. The present individualistic régime, they hold, is workable; it has evils, but these are not of its essence. These defects are foreign bodies and with care and good will may be gradually eliminated. We shall here present first their defense of the present organization, and afterwards their suggested reforms. It should, however, be noted that our summary cannot be ascribed to any one particular writer; it is rather an attempt to offer a composite presentation of opinion, either implicit or explicit, in the views of the group as a whole.[3]

[3] The bibliography of present-day Tory Democracy is voluminous, for the ideas are reflected not only in books but also in periodical literature and parliamentary debates. The following are useful: Noël Skelton, *Constructive Conservatism* (London, 1924); "The Nation and the Land," *Quarterly Review*, July, 1925, pp. 190–209; "Labor in the New Era," *Quarterly Review*, January, 1925, pp. 116–134; "The Safeguarding of British Democracy," *English Review*, July, 1925, pp. 23–30; "Private Property a Unionist Ideal," *Spectator*, 3 May, 1924, pp. 702–703; Parliamentary Debates, fifth series, vol. 182, pp. 773–776, and vol. 191, pp. 154–160. Stanley Baldwin, *Looking Ahead* (National Unionist Association, London, 1924); *Peace and Good-will in Industry* (London, 1925); *On England* (London, 1926). Viscount Cecil of Chelwood, *The New Outlook* (London, 1919); "National Unity," *Quarterly Review*,

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The nation, our authors argue, is above all classes and ranks. Citizenship is superior to economic and social status. The commonwealth is not an arena for the struggle of classes and individuals, but a cultural fusion of all people, for "Society is a community, not a mere aggregation of individuals, not an arena where classes and interests struggle for domination, but an organism within which each man can play his part, and be enabled to render service to his fellows, and in return receive service from them."[4] The Conservative party alone is a true national party. It alone is above class or sect. It alone appeals to a lofty patriotism which unites and binds. "But it [the Conservative party] is the union of classes and interests in the Commonwealth, and no mere formal union of this and that part which it seeks to defend and extend. It is a party broad-based upon the nation's will, blending different classes in its composition, and remembering different interests in its programme."[5] The solution of our social problems is not to be reached by arousing class against class, as the Socialist party is doing, but by the coöperation of all in the common task. By tradition and composition, the Conservative party is destined to achieve the work of national unity and solidarity. It alone typifies the unity of the nation. Its goal is the happiness of all the people, the establishment of industry as a partnership of labor and capital, and the freedom of the masses from want and destitution.

The life of the nation, moreover, extends over a long past and a long potential future. The short span of the life of the individual

April, 1924, pp. 433–452; "Industrial Peace," *Observer*, 25 February, 1923, p. 12; Parliamentary Debates (Lords), fifth series, vol. 57, pp. 364–386, and vol. 58, pp. 541–552. J. St. Loe Strachey, *Economics of the Hours* (London, 1923); *The Referendum* (London, 1924); "The Tragic Predicament of the Unionist Party," *Spectator*, 2 August, 1924, p. 152; "How to Fight Socialism," *Spectator*, 24 January, 1925, p. 108, and 7 February, 1925, p. 188; "An Open Letter to Mr. Baldwin," *Spectator*, 21 February, 1925, p. 272; "A Winning Program for Unionists," *Spectator*, 11 October, 1924, p. 496, 18 October, 1924, p. 537, and 25 October, 1924, p. 594; "All-In National Insurance," *Spectator*, 30 August, 1924, p. 283, and 1 March, 1924, p. 316. Lord Henry Cavendish-Bentinck, *Tory Democracy* (London, 1918); Parliamentary Debates, fifth series, vol. 183, pp. 496–500, vol. 184, pp. 452–456, and vol. 188, pp. 1679–1683.

[4] Lord Henry Cavendish-Bentinck, *Tory Democracy*, p. 5.

[5] *Ibid.*, p. 138.

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is a bare moment in the life of the nation. The individual must adjust himself as best he can to the prevailing network of relationships. The social traditions and the existing mode of association are endangered by the recklessness of the Socialists. These are too precious a heritage to be disturbed violently. Society is not a block of wood to be manipulated by fiat. Changes can be made only gradually and carefully, with due reverence for the traditions of the past. The irresponsible agitation of the Socialists will only bring confusion. It is necessary, of course, to reconcile the wage-earners to the existing social institutions; it is thus necessary to make readjustments; but any such readjustments must be in accordance with British traditions and not with alien ideas.

No readjustment, moreover, must limit the initiative of the individual, for to individual initiative are owed the achievements of the past and the possibility of improvement in the future. Any serious limitation of the freedom of the individual can result only in stagnation. Socialism would thus be fatal, for it would hinder individuality. "The omnicompetent state, the kept citizen, responsibility checked, initiative crippled, character in cold-storage, wealth squandered—towards such a goal, Britain, it may be said, will never consent to be led very far. . . ."[6] It is to free enterprise that we owe the wonderful strides of the past century. To that alone is due the increase in comfort, wealth, and leisure. The marvelous industrial and financial machinery of our age is the result of the free creative force of man. The chief function of industry, that of producing goods and services for the common well-being, is, in spite of some defects, achieved by the present individualistic régime. The vast voluntary coöperation of the various factors in industry for the common end is a fine testimony to the dynamic character of free enterprise. Nationalization of the means of production will crush this free effort. The socialist state is an impossible ideal. "It is an illusion, in a few words, because men are not yet good enough for a state like that; and when they are, they will not need it. Men are not born free. They are not born equal. They are not born fraternal. . . ."[7]

[6] Noël Skelton, *Constructive Conservatism*, p. 7.
[7] Stanley Baldwin, *Peace and Good-will in Industry*, p. 66.

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There are undoubted evils in the present economic arrangement, but these may be remedied by good will and patience and not by the agitation for ultimate panaceas. Some remedial legislation is thus necessary, but all legislation must encourage initiative. The test of legislation should be its effect on character and its aim at helping the individual to help himself.

For the full development of individuality, private property is essential. Property is an extension of personality, and hence vital to its growth. Character and ownership develop jointly. Private property, too, is the basis of our civilization, and around it will center the bitter struggles of our time. To strengthen private property, and with it our civilization, it is necessary, not to inaugurate common ownership, as proposed by the Socialists, but to widen ownership to the greatest possible extent. Our masses must be made to feel the pride of ownership. "Until our educated and politically-minded democracy has become predominantly a property-owning democracy, neither the national equilibrium nor the balance of the life of the individual will be restored."[8] With this extension of private property to the masses must follow a change in the position of the wage-earner from that of a mere tool to that of a responsible human being. Common ownership has no effect on the individual, for what is owned in common is owned by no one. The path of progressive Conservatism must lie in the preservation of private property by its extension.

Any modification of the present political and economic organization must be achieved through the machinery of the democratic state—that is, by the voice of the majority legally expressed—for "with all its faults and drawbacks democracy is the fairest, the safest, the most just, and therefore the best way of government."[9] The most precious aspect of democracy is the participation of the individual in the making of decisions significant to his life. Without this participation, the life of the individual is thwarted and incomplete. Democratic government offers the greatest possibility for the happiness of the masses.

[8] Noël Skelton, *Constructive Conservatism*, p. 17.
[9] J. St. Loe Strachey, *The Referendum*, p. 9.

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Democracy—government by the majority—has its risks, yet it is after all the best form obtainable. Hence, Conservatism is unconditionally pledged to democracy, while "Socialism, whatever its protestations may be, is intrinsically anti-democratic."[10]

To strengthen democratic government, it may be necessary to modify the workings of the political constitution. Thus unless we give up the idea of a bicameral legislature it is necessary to reform the House of Lords—although such reform must not seriously sever that institution's connection with the past. More important, however, for the stability of the social order than reform of the House of Lords is the referendum.[11] Disputes between the two houses of Parliament would then be settled by a vote of the people. Indeed any two hundred members of the House of Commons should have the right to refer any bill passed by Parliament to a popular vote. A majority of the voters of two hundred or more constituencies should also possess the right to refer a bill to a popular vote. Under such a scheme the democracy would have power to protect its life and liberty from the attacks of the Socialists. It would also be shielded from the impetuosity of the cabinet and the log-rolling of party cliques; for no fundamental question could be finally decided without a popular vote. The adoption of the referendum would also reaffirm British faith in democracy.[12]

In the economic sphere, it is essential to remove certain obvious evils so that the Socialist appeal may be more effectively countered. It is thus necessary to coördinate all the chaotic provisions pertaining to insurance and to assistance to the poor into one compulsory and contributory all-in-insurance scheme. This scheme should contain insurance against unemployment, sickness, old age, and risk of dependents left without support. Such an

[10] Noël Skelton, in *English Review*, July, 1926, p. 25.

[11] Certain individual Tory Democrats suggest other reforms in addition to those mentioned below, but those summarized here are believed to be the most important on which there is something approaching a common agreement.

[12] On the referendum there may be less agreement on the part of the Tory Democratic party than on the other suggested reforms. The referendum is definitely favored by John St. Loe Strachey and Noël Skelton, and also in part by Viscount Cecil.

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arrangement would free the worker from the haunting fear of destitution for himself and his dependents. It would then become possible to abolish the Poor Law, with its waste of public money, especially when it gets into the hands of the Socialists. This scheme would make the worker more contented and minimize ca'canny, for it would tend to lessen the causes of present dissatisfaction. It would also lessen unemployment, for when the old men reached the insured age they would be replaced by younger men. Such a scheme, too, is in accord with the historic interest of the Conservative party in social legislation.

In the case of agriculture, it is necessary to encourage the development of peasant proprietorship. Such a plan can be carried out only by government assistance in the form of credits. With this effort should also be associated the fostering of coöperation in purchasing, grading, and selling of agricultural products. The encouragement of ownership is essential to the resettlement of the land, to more intense cultivation, and to the revitalizing of the English country-side. Only the prospect of ownership will entice the urban population to return to the country and thus help solve the unemployment problem. The reawakening of rural life will also mean an increase in the purchasing of commodities produced in the cities, and will thus encourage urban industry. Most important of all, the resettlement of the land on the basis of ownership is essential to the stability of the state, for a property-owning democracy will offer the strongest bulwark against Socialism. "Give us a million and a half more land-owners, big, and especially small, holders, and we have got a lightning conductor for the social system of individualism and free exchange which will prevent the building ever being demolished by the thunderbolt of Socialism."[13]

In industry, the extension of private property may be achieved by the adoption of copartnership. The outstanding vice of the present industrial régime is that the worker is merely a cog in the machine without possessing the free status of a responsible human being. Industry is at present an armed camp riven by

[13] J. St. Loe Strachey, "A Winning Program for the Unionists," *Spectator*, 11 October, 1924, p. 497.

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suspicion, ill-will, and secrecy. To establish harmony in industry it is necessary to identify the interest of labor with that of capital by recognizing both as partners in a common enterprise. Not in nationalization, but in copartnership, lies the true solution. Under a system of copartnership the workers' share of the profits due them in addition to a fair wage may either be returned to them or invested for them in the enterprise. When the workers increase their share of the capital of the enterprise they should participate in the government of the enterprise, with a seat on the board of management as a logical result. Copartnership should be accompanied by the end of secrecy; no essential facts should be concealed. Copartnership cannot be enacted by law, but the government should educate public opinion and encourage it in every possible way. Copartnership would transform the present divergence of interest between employer and employee into a corporate unified interest. It would restrict strikes and eliminate ca'canny. It would change the position of the worker from a mere means to an end in himself, and thus enhance his incentive to strive harder. It would also strengthen the régime of private property, for it would identify with it the interest of the vast masses of wage-earners.

In regard to the Empire, there can be no doubt of the value of its preservation and growth. Its origin was not due to artificial creation by the government, but to the initiative of British men and women. It is now essential to British life; without it, some parts like India would be destroyed, while the mother country would starve. The unity of the Empire must be cemented by economic coöperation; otherwise there will be the danger that some units may be attracted to the economic orbit of another country. "If we, in these crowded industrial islands, can serve the interests of newer countries; and if they, in turn, with their fertile spaces and unlimited natural resources, can serve our interests, we are more than justified in making common cause with them in repairing the waste of war."[14] Britain must also keep intact her imperial defenses and secure from attack her lines of imperial communication. India is entitled to progressive

[14] Stanley Baldwin, *On England*, p. 215.

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constitutional development and ultimately to self-government within the Empire, but democratic development must not outrun her capacity to enjoy such development. Fundamentally, however, what unites the Empire is the sense of kinship; for underlying it is the noble conception of the preservation and extension of the British race throughout the world. With this spread of the British race goes the spread of British civilization to the less developed peoples. The federation of various peoples and races in one imperial bond offers an example to mankind of union in peace. The Empire is a noble heritage; to foster it is a solemn obligation.[15]

Any comprehensive appraisal of the ideas just outlined would require more space than is at present available. The ideas of the Tory Democrats are indeed challenging, for they underlie the vital social struggles of our time. All that can be attempted here is an indication of the main lines of departure for such a criticism. That the Tory writers do not offer a comprehensive political theory has already been mentioned. They do not present a theory of sovereignty, of rights, of liberty, of equality, of the relation of the state to groups, and of the administrative machinery. The elucidation of a comprehensive political theory is the task of the philosopher. Needless to say, the theorists of Toryism do not belong in that category. There is no Burke to defend the *status quo* against the Russian Revolution. Tory writers are rather pamphleteers with an eye fixed on the next election. We observe, as we would expect, the tense attitude of partisans and not the calm of reflective speculation.

Tory Democracy is of long standing, but its post-war manifestations can best be understood from the perspective of post-war events.[16] The period after the war is indeed one of immense ferment. The remaining portions of the adult British population were enfranchised in 1918, but the masses are not satisfied with

[15] To Professor F. W. Coker, with whom I discussed common problems, I am indebted for valuable suggestions.

[16] On social conditions in England after the war see André Siegfried, *Post-War Britain* (London, 1924), and C. F. G. Masterman, *England After the War* (London, 1922).

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mere political democracy. The wage-earners are less patient than ever before with the existence of gross economic inequalities. In recent years England has experienced one general strike and a long series of lesser strikes, while, as has already been mentioned, a party pledged to give effectiveness to the hopes of the masses has risen with surprising suddenness to the position of the second party in the state. Further, the almost complete extinction of the Liberal party has meant the removal of the final barrier between the Conservative party and those who with a religious fervor preach radical reconstruction. The specter of the Russian Revolution personifies these events, for, when viewed in wider perspective, we see in England an English counterpart of the deep contemporary proletarian stirrings.

These events have not, however, stampeded our writers into adopting a reactionary position, for they are the followers of a long tradition of progressive Toryism. The origin of Tory Democracy may be traced to the traditional hostility of a landed aristocracy to the industrial oligarchy and to the consciousness of social obligation which is the best legacy of feudalism. The center of social power has now almost completely passed from the ownership of land to that of industrial property, but the tradition of obligation survives. The essence of that tradition is the responsibility felt on the part of an enlightened portion of the ruling class for the conditions of the ruled. Our writers are the contemporary votaries of that faith. The Stracheys, the Cecils, the Cavendish-Bentincks have by lineage and association always been conscious of a sense of obligation. Such writers cannot represent dull and complacent conservatism or aggressive reaction.

Recent events have practically forced the defenders of individualism to restate their creed. In this restatement we note an alternative to Socialism. It is an attempt to conciliate labor. Liberalism is almost entirely neglected. If it is mentioned at all, it is only by way of exhortation to unite with Conservatism in the fight against Socialism. The attack is thus directed solely against the Labor party. For the Tory Democrats, the ownership and control of land and industrial capital by private persons is the

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only possible form of the operation of the complex mechanism of our economic organization. Socialism means, at the best, a hankering for the grey unknown. True, the régime of private property in land and industrial capital has some serious defects, but these evils may be remedied, not by reckless experimentation with common ownership, but rather by eliminating the fear of insecurity through all-in-insurance and by extending private property through agricultural small-holding and industrial co-partnership. The plan is thus the preservation of the present régime, but mitigated by some reforms to conciliate labor. The position is indeed that of typical reformers standing midway between two extremes neither of which they accept. We see here the defense of enlightened British individualism against the criticism of British Socialism.

Yet it may also be suggested that these views, honest and sincere as they undoubtedly are, offer only an imperfect patch-work. The Tory Democrats do not present a systematic philosophy, but a number of arguments to serve the needs of the moment. They bring forward not a theory of the state, but a party manifesto. They make certain assumptions, but like most men of affairs they do not fully analyze the nature of their assumptions. They omit a consideration of the central problem of justice, and in doing so their discussion must remain "Politik" not "Staatslehre." Their reference to Socialism shows fierce partisanship and not opposition tempered by reflection. Their discussion is discursive, incoherent, and episodic. It lacks the comprehensiveness and unity which alone can raise the issues of our day to the dignity of philosophy. It is indeed remarkable that, even in times of stress like our own, Toryism has failed to enlist on its behalf an outstanding intellect with philosophic breadth adequate to offer a comprehensive defense of the prevailing order of society.

The writers' positive suggestions of how to assuage the discontent of the masses emanate from a series of disconnected discussions which do not seriously offend the prevailing order. Their views propose nothing more than an attempt to preserve ultimate inequality by making the penalty of those who suffer

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less formidable. By disregarding the problem of justice they also, as will appear later, fail to consider the crucial issue of why inequality should exist and be perpetuated. For the future they have nothing to offer except the continuation of the present régime mitigated slightly by selective benevolence. They have, in fact, no ultimate views of any kind, for their outlook is a short-term one. Having first failed to analyze the present comprehensively, they naturally cannot delineate possible future departures. To dissect comprehensively the contemporary state and to indicate future possibilities is an effort of the mind which they are unwilling to undertake.

The fragmentary nature of the Tory views will become more clear when we consider the specific problem of inequality. Tory criticism is directed against the Socialists, yet it fails to meet the crux of the Socialist attack against inequality. The most serious complaint of the Socialist is that the division of the modern British state into a nation of the rich and a nation of the poor, consequent upon the unlimited ownership by private persons of land and industrial capital, is fatal to social harmony, since it engenders envy, mutual hate, and suspicion, and thereby makes impossible the emergence of a real commonwealth. It frustrates the working of political democracy, because property will overbalance political authority in its favor. It arouses, among the more conscious portion of the wage-earners, an active revolt against the maintenance of a régime which makes the workers dependent upon an authority which to them is irresponsible, while the making of profits for private owners as the immediate purpose of industry cannot invoke their good-will. It means, further, that the greater purchasing power of a few wealthy individuals results in the production of luxuries for the few instead of necessities for all. It makes effective equalization of opportunities for self-development impossible. In such a society, the Socialist believes, happiness is possible neither for the rich nor for the poor.

Hence the Socialist insists on the gradual application to industrial organization of the two principles of function and freedom. "The first principle," says R. H. Tawney, "is that

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industry should be subordinated to the community in such a way as to render the best service technically possible, that those who render the service faithfully should be honorably paid, and that those who render no service should not be paid at all, because it is the essence of a function that it should find its meaning in the satisfaction, not of itself, but of the end which it serves. The second is that its direction and government should be in the hands of persons who are responsible to those who are directed and governed, because it is the condition of economic freedom that men should not be ruled by an authority which they cannot control."[17] Function as applied to industry would signify that the operation of industry would be explicable on the plane of morals, for the interest of the community would then be its immediate and not its remote consideration. Rewards would be given, not to owners, but to those who render a necessary social service. Freedom in industry would mean granting to all producers the status of free men. It would not signify that all men are equally authorized to issue commands, but it would involve the participation of the technicians and artisans in the making of those conditions that determine their functional lives. Authority could then be called to account by those who would carry out its orders. Such views, it is argued, do not deny the validity of political democracy, as our authors infer; on the other hand, they mean its reaffirmation by the extension of the plane of responsibility.

Nor does nationalization of vital industries by which the Socialist hopes to attain his ends imply the omnicompetent state and the kept citizen as the Tory writers fear. Nationalization, it is argued, means merely social ownership, with the community in the rôle of residuary legatee; the administration of industry as distinct from ownership would vary with the nature of the industry. Whether a particular industry should be administered by a minister at Whitehall, whether it should be as decentralized as was suggested by Mr. Justice Sankey in connection with the

[17] R. H. Tawney, *The Acquisitive Society*, pp. 7–8. The entire book is an acute analysis of the Socialist position. It, however, over-emphasizes functional freedom, and apparently also the rôle that social service can play in industry.

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coal-mining industry, whether it should be under the control of a consumer's coöperative association, whether it should be under the control of producers, will depend upon the particular conditions in each industry. The traditional method of the control of a national service by a minister at Whitehall is no more inseparable from socialized industry than the French multiple party system is inseparable from parliamentary government. The objection to nationalization, where it has any substance, is an objection to centralization. But centralization in the administration of national industry is no more inevitable than in the administration of justice.[18] Nor is socialization of such industries as coal-mining and railroads incompatible with the retention of private enterprise under regulated conditions in less vital and less standardized industries. Nor, again, is the proposal of socialization incompatible with the stimulation of effort on the part of the technicians and artisans by special incentives. Nor, finally, is such a scheme incompatible with the wider extension of agricultural small-holdings as proposed by our authors. The problem of constitution-making in industry is far from solved and will undoubtedly need further exploration. However, to argue about nationalization as opposed to private enterprise without reference to a particular method of administration as applied to a particular industry is otiose.

The failure of the Tory Democrats to face the Socialist complaint may be best understood when we discern its historic origins. The attitude of Tory Democracy may be traced to the compassion felt by a ruling class for those whom it rules. It is the expression of paternalistic benevolence of the lord for the serf. At the present time the situation is totally different. Toryism in the new age must recognize the wage-earners not as objects of compassion but as equal citizens in a democracy. This recognition involves the

[18] On proposals for the administration of socialized industry see Sidney and Beatrice Webb, *A Constitution for the Socialist Commonwealth of Great Britain*, pp. 147–203; R. H. Tawney, *The Acquisitive Society*, pp. 105–157; and H. J. Laski, *A Grammar of Politics*, pp. 433–541. See also J. A. Hobson, *Incentives in the New Industrial Order* (London, 1922). Mr. Justice Sankey's report on the coal-mining industry and the plan of the Miners' Federation may be found as appendices in Frank Hodges, *Nationalization of the Mines* (London, 1920).

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abolition of the disproportionate power exercised by a few through the control of property over the lives of the many and the active participation of all wage-earners in the management of industry. Our writers do not provide for these conditions. Their appeal will therefore hardly be accepted by the more energetic leaders of the wage-earning masses, who continue to look to Socialism alone for the realization of their hopes.

That the inability of the Tories to meet the crux of the Socialist criticism is not accidental will be readily observed when we consider their own meager analysis. The Tory writers insist that social changes must be rooted in the past and that Socialism means a defiance of British traditions. They rightly point to the fragility of the cake of custom and the precarious nature of the social structure. It is indeed the function of conservatism to prevent recklessness in social experimentation. No less important, however, is the necessity of distinguishing the existing institutions from the essential ones. That is, after all, the purpose of critical political philosophy. The best test of the irrelevance of a particular institution is insistence upon its removal. The spirit of modification is then instinct with the will to preservation. Nor is there any danger that MacDonald, Snowden, and Webb will do violence to British traditions, for, we must remember, British Socialism is as native to the British soil as Tory Democracy. Mrs. Webb's *My Apprenticeship* throws more light on the making of British Socialists than any reference to the grim logic of Karl Marx.[19] British Socialism is indeed as remote from Russian Communism as British Conservatism is remote from Italian Fascism.[20] MacDonald can no more be blamed for the excesses of Lenin and Trotzky than Baldwin can be blamed for the excesses of Mussolini and Admiral Horthy. The Labor party promises to play the same rôle in British political evolution that the Liberal party played in the past century. Its policy of "the inevitability of gradualness" is the ancient British method of broadening

[19] Beatrice Webb, *My Apprenticeship* (London, 1926). See especially Chap. VII.

[20] On the Communist attitude to British Socialism see Leon Trotzky, *Where is Britain Going?* (London, 1926). See also the reply to Trotzky by Norman Angell, *Must Britain Travel the Moscow Road?* (London, 1926).

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precedents. No fear may justly be felt that its leaders will defy historic experience.

The Tories point to the growth of British industry and commerce during the past century as proving the validity of economic individualism. Owing to the technical efficiency of British industry, which was in advance of that of other countries, to the absence of strong competition, to a plentiful supply of labor, which, in the absence of trade-unions was forced by the fear of starvation to accept minimum wages, British industry did indeed make enormous strides. Now, however, the situation has changed. The technical supremacy of British industry no longer exists; competition has become more intense; owing to trade-unions and unemployment relief, the workers cannot so easily be beaten down by the fear of starvation. In order that British industry may thrive, it is now necessary to obtain the good-will of the workers. As long, however, as the position of the wage-earners continues largely unmodified, this good-will will not be forthcoming; for there is a growing resentment on the part of the conscious minority of the wage-earners against their dependent condition. They question the moral right of the owners of property to control their lives. They demand a change in status. The proposals of the Tory Democrats do not offer them that.

In discussing property, the Tories rightly recognize the necessity of broadening its base. That alone, however, is insufficient. It is also necessary to prevent the accumulation of vast aggregations of property in the hands of a few persons; for property, beyond the needs of livelihood, serves more as a means of power over other persons than as an aid to direct personal enjoyment. The statement of our authors that the issue is between private property and Socialism is futile. The discussion, in fact, of private property in general, for or against, is irrelevant. Private property is a right, and like all rights it must find its validation in social purpose. It is not constant, or unconditioned, or immutable. Slaves, bridges, roads, and public offices were at various times private property. The Eighteenth Amendment abolished private property in liquor. A changed outlook and changed conditions alter the nature of the right to private

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property. It is not now an absolute or unvarying concept. The various elements that now combine to form the general right to property must be differentiated. It is necessary to distinguish between its different parts, for not all of them are of equal validity. Morally, to put private property in clothing, houses, furniture, books, and innumerable personal things on the same basis with property in royalties from coal mines is like placing on the same level the undoubted right to express an opinion on democracy with the undoubted wrong to shout "fire" in a crowded audience. The first form of property is in a true sense an expression of personality and its extension is desirable; the second form is an expression of power, which may be exercised with malice. If discussion on private property is to be helpful, it is first essential to subdivide property into its various elements. Then after the various types of ownership have been differentiated and classified it becomes necessary to decide what kinds and amounts may be owned in private. All such adjustments, assuredly, must be, in the words of John Stuart Mill, "not the adaptation of all human affairs to the existing idea of property, but the adaptation of the existing idea of property to the growth and improvement of human affairs."[21]

Our Tory writers express their faith in democracy and their desire to strengthen the power of the electorate by the referendum. In their belief in democracy they emphasize their divergence from Continental Fascism and their adherence to British traditions. They talk, however, as glibly about the rule of the people and public opinion as political philosophers did before the analyses of Graham Wallas and Walter Lippmann. It was Graham Wallas who first pointed out in a comprehensive manner the existence of an amazing hinterland of subconscious impulses artfully exploited by interested manipulators. Walter Lippmann has gone a step farther and denies the pretensions of the democratic citizen to omniscience and omnicompetence. What actually exists is not democracy in any real sense, but the rule of oligarchy—a rule different from oligarchy proper inasmuch as the oligarchs now are called to partial account at their periodical competition against

[21] Quoted in H. J. Laski, *A Grammar of Politics*, p. 526.

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other oligarchs. Only a vast experiment in education and a radical approach to greater economic equality can invigorate democracy. Until then, structural changes are of little avail. The referendum, especially, is futile, for it will only impose additional burdens on an uninterested electorate. Such suggestions, in fact, lose sight of the more vital ailments of the modern state.

Of all the suggestions of our writers, the proposal of a comprehensive scheme of all-in-insurance is the most significant. The adoption of this scheme would considerably mitigate the haunting fear of insecurity on the part of the wage-earners. The proposal shows, too, the large degree of advance made by contemporary Tory Democracy. It marks a recognition that the masses, even if personally industrious, live perennially on the edge of an abyss, their normal earnings never sufficing to provide for even the ordinary emergencies. It signifies, further, a realization of the need for collective provision, and, in a practical sense, an affirmation that the state is not a glorified policeman but a partnership.

Less commendable is the suggestion of copartnership. Its advocates are conscious of the need for a change in the status of the workers, but their only concrete suggestion is a thinly disguised form of profit-sharing. They aim at a balance between the two warring parties in the industrial field, yet their only positive proposal practically amounts to nothing more than that the owners should make a gift to the workers on conditions determined solely by the owners—which conditions may be onerous and exacting. Even if the worker should become a shareholder, his power over the industry would be as insignificant as that of the ordinary shareholder. Even if in the course of time the workers should succeed in electing some members of the board of management, their representatives would most likely be in a hopeless minority. Moreover, mere representation on the board will not inaugurate self-government in industry. Democracy in industry, to be effective, must begin with the workshop as a unit and extend from the workshop throughout the whole hierarchy of the industry. Only then will it mean active and immediate participation of the workers in the decisions that determine their working lives. The proposal of our authors will not abate the

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moral indignation felt by the workers against an order of society that subjects them to the commands of those that are answerable to nothing but their own caprice.

Nevertheless, in spite of the limitations which have been pointed out, the rôle of Tory Democracy in English politics is a highly important one. It is to the Tory Democrats that the Conservative party owes its recurrent vigor and adaptability. It is they who have constantly reinterpreted Conservative principles in accordance with the demands of each age. It is they, too, who are responsible for the liberal tendencies by which present-day Toryism frequently surprises its opponents.[22] It is the present function of Tory Democracy to imbue the entire Conservative party with its ideas and thus bridge the gap between the old order and the new. The old order enfranchised the masses, but owing to the inexperience of these masses and, further, owing to the concentration of economic power in a small portion of the British population, the purpose inevitably failed to be fully attained; hence the remoteness of the actual realization of democracy from the fond hopes of its early advocates. The new order must aim at a vast experiment in education and at the deconcentration of all forms of power, whether of office or of property. Only in such a perspective is it at all possible to visualize the realization of the noble ideal of democracy of "a society of free men and women, each at once ruling and being ruled." It is the task of the Tory Democrats to reconcile the Conservative party to these new possibilities. The more successful they are in permeating the Conservative party, the more peaceful and orderly will be the period of transition and the less danger there will be that England will experience a social convulsion. That they may achieve their task is, perhaps, not an extravagant hope; for in England, we must remember, Conservatives may be Socialists and Socialists may be Conservatives.

[22] The Widows' Pension Act, 1925, and Mr. Baldwin's speech on trade-union levy may be taken as recent illustrations. For brief summaries see the *Annual Register*, 1925, pp. 17–18, 52–55.

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SOCIAL THEORY AND THE *PRINCIPIUM UNITATIS*

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Complex as is the immediate situation of social theory, a general view reveals some significant continuities, both spatial and temporal. The attitude of the pluralists, whether in theory or in practice, to the sovereign nation-state has more common ground than at first appears with that of the states themselves toward the nascent organs of international government; and the dilemma underlying both controversies is in fact nothing less than a restatement, in modern ideology, of an issue fundamental to the history of the entire Christian era.

That issue, stated in the broadest terms, centers about the relation between *de facto* and *de jure* sovereignty; or, more broadly still, between political and ethical, secular and spiritual, authority; and its importance may be suggested by the generalization that security in social relations is attainable, and has in fact been attained, only when the *de facto*, or political, sovereign—whatsoever form it may take—has been substantially integrated with the immediate source of ethical or moral authority. The pre-modern period of history abounds in statements, both factual and doctrinal, of this issue. Earlier times, authoritarian in temper and more eloquent in their language of personification and symbol than ours with its formulae, frequently gave it concrete and spectacular expression. Not again, in all likelihood, will it stand forth in the drama of another Lutetia, Canossa, or Worms; and its persistence is increasingly difficult to trace in the period following the triumph of rationalism, more especially since the virtual failure of idealistic theories of the state. It is not always understood, for example, that the felicific calculus of the utilitarians was essentially an attempt to restate a sort of divine-right doctrine in terms that would supply an intellectually demonstrable basis for a rational theory of law and government; although Bentham's application of the pleasure-pain principle

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as the criterion, not merely of expedient, but of right conduct, clearly illustrates the nature of the quest for a *principium unitatis*.[1] In its teleological aspect, modern sociology shows the continued development of this effort, altered in method rather than in aim. Instead of the naïve and a priori language of the felicific calculus, theorists of the socio-psychological school—Ward, Giddings, and Macdougall, for instance—use the terms and concepts of modern psychology; while others—such as Ratzenhofer, Small, and MacIver—less idealistic in their outlook, construct a hierarchy or harmony of interests where the schoolmen placed a hierarchy of ordinations. In both schools the essential program is still the search for a unitary principle as between *de facto* and *de jure* sovereignty, political and ethical authority—"ethical" being here understood to include the designation of supreme interest (in the sense, for example, that the concepts of social solidarity and public need play a comparable rôle in Duguit's system to that of *das Rechtsbewusstsein* in Krabbe's); and "authority" admitting a subjective as well as an objective interpretation.

On the negative side, the current importance of the issue needs no emphasis. The denial of sovereignty involved in the pluralists' insistence upon autonomous group interests has its counterpart in the reservation of "vital interests" of sovereign states from the scope of international arbitration treaties. The following citation from Holcombe is one of many possible illustrations of the persistence of the same quest in pure political theory: "The will of the real rulers of the state, therefore, becomes a general will and hence the proper source of a political authority from which justice must flow, when the powers which they exercise are derived from the consent, expressed or implied, of the governed. The laws which these rulers enact and administer are just, when designed for the welfare of the state and supportable, if not actually supported, by a sound and enlightened public opin-

[1] Cf. Maine's essay *Roman Law in Village Communities*. "Much of the laborious analysis which Bentham applied to legal conceptions was directed to the establishment of propositions which are among the fundamental assumptions of the jurisconsults."

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ion. . . . Popular sovereignty, rightly understood, is a philosophical, not a juristic, concept. The governments of modern democracies are merely more or less popular according to the degree to which the preponderant opinion in the conduct of public affairs approximates true public opinion."[2] The effort to bridge the gap between the "real rulers" and specific enactments on the one hand, and a generalized "justice" or "welfare" on the other, by means of a (hypothetical) "true" or ideal public opinion is to some degree typical of modern liberalism.

It is in the international sphere that the urgency of the issue is most patent: it is there that the attempt to reënact a *jus gentium* that shall be identifiable with *jus naturale* proceeds under the direst penalties. Within our national frontiers we have in many cases been able so to integrate the events of human association as to secure therefrom, not merely the minimum conditions of the good life, but some positive contribution to it. Yet across those same frontiers—which are graven rather in the minds of men than upon the surface of the earth—we have so far failed to project even a bare security for existence. In part, this failure has been due to the disparity between the rates of cultural advance in different regions; in part, to that between the various phases of culture itself, particularly between economic and social integration.[3] In the economic sphere the situation is now rapidly changing; whether for better or worse, it rests with ourselves to decide. Material culture, with its social consequences, still advances at breathless speed—too rapidly, perhaps, for spiritual health;[4] and most of us still labor under the nineteenth-century acceptance of that speed as axiomatic for all social thought, endeavoring to persuade ourselves against all evidence that the rest of our institutions will in time catch up. But within the

[2] *Foundations of the Modern Commonwealth*, pp. 37, 238.

[3] Cf. Ogburn, *Social Change*, Part IV.

[4] The following observation from Thomas and Znaniecki, *The Polish Peasant*, I, Intro., is suggestive: "The pace of social evolution has become so rapid that special groups are ceasing to be permanent and stable enough to organise and maintain organised complexes of attitudes of their members which correspond to their common pursuits. In other words, society is gradually losing all its old machinery for the determination and stabilisation of individual characters."

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economic sphere the acceleration has shifted during the last few decades from the strictly productive to the distributive factors—a natural consequence of the unregulated accumulation of capital goods; and whether the continued advance of transport and communication is to wreck the world in a struggle for markets and raw materials, or to bind it in a closer solidarity of social culture, no man can yet say.

But it is time the alternative were at least realized. The disaster from which Europe is now struggling to recover has raised the problem of human solidarity to a plane upon which mere *de facto* political sovereignty is incapable of functioning; and the discovery, among heterogeneous communities, of a unitary principle adequate to support a unitary institution is now the larger aspect of the problem raised by the conflict of groups within the constitutional state. That problem has been solved once only—and that upon a far smaller scale and in vastly different terms—in fifteen hundred years. Yet from its solution in the Roman Empire enough of suggestive value remains to justify a brief commentary. All that is proposed in this connection is to outline a historical setting for the problem as it appears in contemporary social, and especially international, theory. But any reader who may be disposed to grant that social psychology has changed less than concepts and conduct patterns may gather a few hints of more direct significance as well.

Modern analytical history shows a distinct reaction against the tendency of earlier historians toward the idealization of Roman institutions, a reaction strengthened in recent years by a consideration of the military basis of the Roman system.[5] It may be questioned whether this reaction, especially in the latter emphasis, has not gone somewhat too far. The military basis of the *pax Romana*—that supreme achievement of the pagan world to which its Christian successor has produced no parallel—has never been denied; but recent insistence upon it has tended to overlook two important considerations. The agressive and expansive rôle of the military arm was virtually ended before the evolution of the

[5] For a characteristic verdict see Barnes, *The New History and the Social Studies*, pp. 359–362.

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imperial system had more than begun; and no contrast could be more important in its consequences than that between the Julian conception and the later policy of stabilization. A comparable contrast would perhaps be that between the character of the British military machine in India in the eighteenth and the twentieth centuries. The really constructive contribution of the military system from the second century onward lay in the provision, in the only way then feasible, of a universal medium through which the influence of the geographical expansion could be brought to bear upon the evolving Roman institutions.[6] And the strength of the imperial edifice lay precisely in the breadth and adequacy of this institutional development, through which the effects of the central decadence insisted upon by sociological writers were both mitigated and delayed.

In this respect the contribution of Roman arms was basic. To them were due those physical lines of communication without which neither law, church, nor language could have extended its sway. Where they rested, economic communities sprang up about which the commerce of Europe in later days was to congeal: communities which acted in fact as the nodal points of the nascent western culture. For two centuries before Caracalla opened the gates of citizenship to all and sundry, they had furnished to both military and civil talent an avenue that might lead to the very center of the world. Enlistment served as an initiation into citizenship; and the discipline of the legions was the precursor of the discipline of the law.

Nothing indeed is more important to an understanding of the first five centuries of our era than an appreciation of the rôle played by the military administration in tiding over a period of change in the very nature of cultural institutions. In law, the period witnessed a secular change not only in technique, scope, and content, but in the concept itself. It was from the necessity of dealing with the "tribes without the law," i.e., the civil law, that the great edifice of equity arose. Cicero, in the last years of the republic, had anticipated to some extent that union of Greek thought and Roman practice from which so large a part of

[6] Cf. Bryce, *Studies in History and Jurisprudence*, Essay I.

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political theory, from Aquinas to Rousseau, was ultimately to arise; but equity as a principle rather than a "correction" of law was an idea unknown even to Aristotle.[7] It was on the practical application of the concept to the essentially Roman problems of the praetorian office that the later edifice arose; and the very title of the *edictum perpetuum* indicates the prestige which gradually accrued, in this different setting, to the old Greek notion of ἰσότης.[8] It was perhaps fortunate for jurisprudence that the edict of Caracalla came no sooner; since the delay afforded occasion for the once despised *jus gentium* to attain that degree of breadth and importance upon which later thought could base its *principium unitatis*. The evolution was not strictly logical nor wholly free from accident; but it was none the less effective for that. Thus, two hundred years before Justinian, forces were working to produce, not merely that unity of law which marked the third century,[9] but a transcendent principle of unity which still survives in our thought and our ideals.

The same period saw a deliberate evolution of the concept of the Empire as a factual reality. Even in republican times the idea of the Empire as eternal and indivisible was in men's minds; and when, under Diocletian and Constantine, the Roman dominion was no longer identified with the Roman city, one effect at least was to set the idea on a still loftier and more universal plane.[10] "Having lost its local center, it subsisted no longer by historic right only, but, so to speak, naturally, as a part of an order of things which a change in external conditions seemed incapable of disturbing."[11] Thus, long before the full theory of the Holy Roman Empire was evolved, even before Constantine, the concept of imperial unity was something more abstract and universal than the physical supremacy of Rome. And this conceptual evolution, based on the physical unification achieved by the armies, on the spread of a Latin culture, and on the

[7] Cf. Aristotle, *Nic. Eth.*, V, ii-v.

[8] Maine, *Ancient Law*, Chap. 3.

[9] Bryce, *op. cit.*, Essay II.

[10] Bryce, *Holy Roman Empire*, Chap. 3; Ferrero, *Greatness and Decline of Rome*, Vol. V, Chap. 14. Cf. *Cambridge Med. Hist.*, Vol. I, Chap. 20, pp. 574–5.

[11] Bryce, *Holy Roman Empire*, Chap. 1.

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development of a law universal in scope and theory, was carefully fostered by, and focused upon, the imperial office itself.

The temptation to interpret the cultural practices of the past by the ideology of the present has nowhere wrought more misapprehension than in regard to the sanctification and subsequent apotheosis of the emperors. It has been represented by numberless writers of the Christian tradition as a piece of crass superstition or wanton idolatry, despite its long background of tradition and precedent in the ancient world, its obvious suitability to the temper of the age, and the supremely important ends of policy which it served. In view of the essentially social nature of the Roman religion, and of the ancient and intimate connection of the office of *pontifex maximus* with the Latin kingship,[12] the assumption of that office by Augustus may be regarded as an entirely logical culmination of the unity he strove to reëstablish. And just as this step with the revival of the strictly Roman religion, was in accord with the spirit of the Senate and citizens of Rome, so the later apotheosis met the less sophisticated aspirations of the world outside her gates. In both cases there is ample evidence to show that the emperors were following rather than leading public opinion.[13]

The significance of the provincial origin of the emperor cult has been remarked by many writers. Those who have seen country folk filing through the Capitol at Washington, or gazing at the sentries of the Horse Guards or the Palace in London, may glean some faint hint of the effect produced by the imperial name and office on the minds of Roman provincials.[14] Says Ferrero: "Gaul was the first European province to adopt, with greater readiness even than Greece and other Oriental nations, that cult of living sovereigns which originated in Egypt and which Asia Minor had transmitted to Augustus and to Rome. Gaul was Italy's neighbour, and had enjoyed republican institutions and elective

[12] Fowler, *Religious Experience of the Roman People*, Chaps. 8, 12.

[13] Dill, *Roman Society from Nero to Marcus Aurelius*, Bk. IV, Chap. 3; Bryce, *Studies*, Essay II, note to p. 27; Sweet, *Roman Emperor Worship*, pp. 59, 67–68, and references there given; Cumont, *Mysteries of Mithra*, Chap. 3.

[14] Cf. Bryce, *Holy Roman Empire*, Chap. 3.

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magistracies but a dozen years before; yet she could not understand the ingenious organization of the supreme power in the republic which had enabled Rome to put an end to civil war; she could only realize the strange power of Augustus under oriental symbolism, and she regarded him as an Asiatic monarch who personified the State."[15]

As well indeed, we add, she might; for the emperor was literally the personification of triple authority—military, as *imperator*; legal, as *dominus mundi*; and religious, as *pontifex maximus* and subsequently *divus*. The emphasis put upon the deification policy, not merely nor mainly by such perverts as Caligula and Claudius, but by statesmen of the caliber of Trajan and Diocletian, indicates its supreme importance in the ideology of the Empire. If, in fact, we resist the temptation to the excessive rationalization of social conduct which perennially besets the historian, the dynamic rôle of the emperor-cult becomes obvious. While the task of evolving a unitary principle in terms that a later civilization could appropriate and understand was being gradually worked out by the jurisconsults, the apotheosis of the emperors met the instinctive demand for a conceptual absolute in an expression suited to the universal early language of myth and personification. The cult was thus not only an ubiquitous stimulant to what Bryce has termed the "sense of an imperial nationality;" it was also the tangible keystone of a transcendental as well as a mundane unity. "The inevitable result" says Sweet "was unification. The emperor's name was carried throughout his vast dominions and his power known and felt everywhere. The center of this system is the imperial throne at Rome; its circumference, the outermost boundaries of the empire; its radii, the countless major and minor officials who wear the livery and perform the rites of the deified emperor, and in so doing bind every community, however remote, and almost every individual, to the royal person by the twofold bond of political loyalty and religious devotion."[16] And it was because Christianity alone of all the cults gave overt challenge to this secret of the *principium*

[15] *Op. cit.*, Vol. V, Chap. 9.
[16] *Op. cit.*, p. 89.

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unitatis that pagan Rome could not afford to ignore it. Able and tolerant rulers might well believe that more was at stake in the maintenance of the established world-order than any sect or prophet could be worth—as indeed a historian, viewing the entire sequel, might not impossibly contend even today; and of that order the ultimate sanction invoked in the deification was the supreme symbol. Small wonder that in later days, though the form of adoration vanished, the sentiment of reverence for the imperial office remained, surviving even the last faint vestiges of the Empire itself. Small wonder that, even today, the Italian effort to revive a national solidarity should reëvoke, in the Eternal City, the very symbols, the very gestures, of imperial Rome—so much, if nothing else!

Of the disruption of this dual unity of secular and spiritual allegiance, the whole of mediaeval history is the record. It seems, indeed, as if the problem had been solved only momentarily, and on the very eve of a conceptual era in which the terms of the dominant solution no longer applied. Much of the connection between the various biological and cultural factors of the disruption is obscure; but outstanding in the immediate foreground are the new subjective psychology of the Christian communism and the pressure of racial movements too vast and too rapid for assimilation. It is curious, though natural, that economic forces figured far more in the breakdown than they had in the upbuilding of the imperial solidarity. The reciprocity of economic interests had not, in the creative era, reached a stage at which it could exert much formal pressure upon other institutions; and the dynamic importance it subsequently attained was along lines that revealed the relative inadequacy of the technical to the conceptual culture. But there is colorable evidence in history for Woodrow Wilson's generalization that "interest does not bind men together: interest separates men. . . . . There is only one thing that can bind people together, and that is common devotion to right."[17] Unfortunately, the effort to give content to this abstract "right" in the matter of group relations has fared little better than the attempt to establish a reliable community of interest.

[17] Speech at Manchester, Dec. 30, 1918 (Baker, Vol. I, p. 309).

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The whole problem was well on its way to a new statement—although not as yet a new solution—when Constantine unwittingly left the See of Peter to inherit not merely the prestige, but, as it turned out, much of the secular leadership of the imperial city. Time and again, in the breakup of the West, events anticipated the use that was to be made in the twelfth century of Constantine's supposed donation. But apart from such excursions of the early papacy in secular leadership, the genius of Rome was evolving from the anarchy of the primitive faith a new imperialism whose power lay precisely in its independence of the temporal sovereignty; while with sure instinct the Church held as it were in reserve the one element of the early faith that could render that imperialism secure in the coming chaos—the superiority of the spiritual allegiance. Not that as yet, nor for several centuries, the claim was made to a supremacy of the spiritual authority in matters temporal; though it was latent in the situation, waiting until the closer integration of the national groups should in time force its assertion. But the duality of allegiance was in fact already established when Julian fought the last great fight of pagan Rome; and Gelasius was virtually defining a *fait accompli*.[18] From the fifth century onwards the old unity of the *pax Romana* was split upon the principle "that human society is governed by two powers, not by one, by the temporal and the spiritual, and that these are embodied in two authorities, the secular and the ecclesiastical, two authorities which are each divine in their origin, and are, each within its own sphere, independent of the other."[19]

That the dual allegiance thus laid upon mankind might issue, if not in a single suzerainty, at least in coterminous systems of community, was the ideal of the Holy Roman Empire: a dream whose splendor outshone ten centuries. Fate was against it. Thrust into being by the dim racial tides of the Middle Ages,

[18] "Duo quippe sunt, imperator auguste, quibus principaliter mundus hic regitur: auctoritas sacrata pontificum, et regalis potestas. In quibus tanto gravius est pondus sacerdotum, quanto etiam pro ipsis regibus hominum in divino reddituri sunt examine rationem." Gelasius I, Ep. xii. See Carlyle, *Mediaeval Political Theories*, Vol. I, Chap. 15.

[19] *Ibid.*, Vol. IV, p. 4.

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new groupings, new allegiances, bore the two strains of the dualism farther and farther apart. From time to time—as at Aachen or Canossa—some titanic personality would reach out from one side or other to bind them briefly together; and throughout the whole period we watch the dual authorities striving, by combined force, prestige, and diplomacy, though often with genuine ideality of purpose, each to subvert the other to its orbit. But the old unity was gone, never apparently to come again. In the spiritual sphere, the various orders—but especially the lower—without breaking from the imperial authority of the Church, became more and more affected by the local solidarities of which they formed a part. In the temporal sphere the matter was more complex. The imperial title enhanced, but did not supersede, the tribal kingship.[20] Its prestige enabled the latter to extend its scope and strengthen its authority; but it could not merge the militant groupings in a lasting unity, even on the secular side. Under stress of necessity and in closer conformity with economic culture, the kingship was hardening in the rigidity of feudalism. A system of specific sovereignty was evolving which, despite its successive borrowings from the imperial idea, resisted in the long run all attempts to perpetuate the imperial reality. "As a matter of fact the principle of the Universal State was assailed while as yet the principle of the Universal Church was not in jeopardy. Especially in France, we hear the doctrine that the oneness of all mankind need not find expression in a one and only State, but that on the contrary a plurality of states best corresponds to the nature of man and of temporal power."[21] New solidarities absorbed the social consciousness as the new groupings stabilized. Monarchy, with its train of good and evil, partitioned the western mind; and that one bond to which even Luther and Calvin clung—the doctrine of a divine institution of both secular and spiritual powers—proved an inadequate foundation for the *principium unitatis*.

[20] Cf. Gierke, *Political Theories of the Middle Age*, Sec. V, and Bryce, *Holy Roman Empire*, Chap. 8.

[21] Gierke, *op. cit.*, Sec. III, p. 20.

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Yet throughout the investiture and Hildebrandine contests it is remarkable how often from either side the breach of peace or unity is made the ground of an indictment. Whether it is Geoffrey of Vendome or Wido of Osnaburg complaining of the harm done to body and soul, church and kingdom, by the contest of the powers, or Peter Crassus, Wido of Ferrara, and the author of *De Unitate* accusing the Pope, or Manegold the emperor, of destroying peace[22]—we seem to detect in writers on both sides a dawning apprehension of what might follow the disruption of the dual unity. But as the national solidarities cohered, and the investiture issue waged its dreary progress, an unconscious change came over the *argumentum unitatis*. Ecclesiastical writers, deploring the disruptive tendency as loudly as ever, begin to speak in terms of the national rather than the imperial unity. Thus Gregory of Catino, arguing at the time of Henry V the impiety of resistance to the royal authority, goes on with practical good sense to emphasize the danger that may come upon the realm if the churches, with their wealth and vassals, refuse allegiance to "*rex vel imperator.*"[23] With Honorius, Hugh of Fleury, and in particular the writer of the Tractatus Eboracenses,[24] the practical end of the argument suffers a slight change of emphasis in favor of the *de facto* national unites. Hugh, who dedicates his work to Henry I of England, while making no concession in his spiritual doctrine, yet stresses the subjection of the bishops to the crown for the clear sake of national unity—"ut universitas regni ad unum redigatur principium."

Outside the doctrinal dispute, the emergence of national allegiances is, of course, still more striking. Sentiment, tradition, custom, and interest were all congealing about the national foci, which the valiant sallies of the temporal empire served but to bring more fully into consciousness. And as the "drift towards monarchy"[25] persisted, more and more remote grew the fulfilment of Dante's pathetic aspiration "that in this little plot of

[22] Carlyle, *op. cit.*, Vol. IV, pp. 285, 227–31, 222, 239–42, 245–7, 233–6.
[23] *Ibid.*, pp. 106–8.
[24] *Ibid.*, pp. 286–94, 266–70, 274–7.
[25] Gierke, *op. cit.*, Sec. V, p. 30.

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earth belonging to mortal men, life may pass in freedom and with peace."[26]

With the specific theory of sovereignty which was thus growing up it is unnecessary here to deal. What is important for our immediate purpose is to emphasize the limits within which as yet that problem was confined. Those limits were set by the persistent principle of the divine institution of both spiritual and temporal powers; and the fact that, as Gierke puts it, "the Imperium Mundi which rose above the sovereign states had evaporated into an unsubstantial shadow,"[27] did not of itself alter the doctrinal position. For the divine authority originally confined to the emperor was being transferred, by a gradual and half involuntary movement, to the monarchies; and even the elective principle, as in Germany and England, is by no means to be understood as implying a modification of this view. Nay, Marsiglio himself is careful to preface his unique exposition of popular sovereignty[28] with a careful exclusion from the field of all Mosaic or divine ordinances; though his manner indicates pretty clearly how much importance he attaches to them. Not until the spiritual *imperium* itself was attacked, and the spiritual as well as the temporal empire disrupted, was there room for a radical revision of the doctrine of temporal authority. In truth, it was Luther more than any man who cleared the way for that new general theory of sovereignty which the modern world has so far failed to discover.

Not, of course, that Luther intended as much, nor anything like as much; but the stage was set for him. We must beware of imputing the fruition of an idea too exclusively to its content, irrespective of the soil on which it fell. It was none of Luther's doing that his teaching acted as such a drastic precipitate in matters temporal. The assertion of a divine institution of temporal authority, both general and specific, not merely survived but was immensely strengthened by Luther and his immediate followers. If Luther "destroyed in fact the metaphor of the two

[26] *De Monarchia*, Church's trans.
[27] *Op. cit.*, p. 97.

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swords,"[29] the one with which he equipped his "godly prince" was double-edged. The utmost he would concede was the superiority, in case of conflict, of the spiritual allegiance. It was the Jesuits, not the reformers, who in the extremity of the issue let loose the full force of that argument against the temporal power, splitting wider apart, as they did so, the two halves of the *principium unitatis*. "When the Protestant writers on natural law always emphasize the divine ordinance of the State; when they willingly put the subject as against the monarch in the relation in which the child stands to a father whom it does not even choose; when, finally, they firmly hold the indefeasible majesty of the head of the State—the Jesuit writers on State law meet them with most decided opposition. In the interest of the Church they assert the human origin of the State by means of a primitive social contract, and it follows therefrom that where the prince shows himself unworthy of the power with which he is entrusted, the mandate which has been given him may be resumed. On the other hand, the head of the Church, whose origin is from above, cannot be deposed."[30]

And while on the one hand early Protestant theory was thus attacked by the Church's reserve weapon, it was with something like horror that the reformers saw rising on the other hand the tide of radical individualism. It was no part of Luther's intention, nor of Calvin's either, that the doctrine of the autonomy of the individual conscience should be so promptly construed, first in act and then in theory, to imply the autonomy of the individual intellect and will; and the note of desperation is plain in their protests. Even a century after Calvin men could still be genuinely frightened at the prospect. "When I do hear men speak," says Ireton, "of laying aside all engagements to consider only that wild or vast notion of what in every man's conception is just or unjust, I am afraid and do tremble at the boundless and endless consequences of it. . . . . If you do paramount to all constitutions hold up this law of nature, I would fain have any man show

[28] *Defensor Pacis*, quoted in Coker, *Readings in Political Philosophy*, p. 162.
[29] Figgis, *Divine Right*, p. 84.
[30] Erdmann, *History of Philosophy*, Vol. I, par. 252.

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me where you will end."[31] Yet Ireton's own sword (as he half realized) was hewing a way for the age of reason, and (as he feared) for heaven knew what unreason in its train. Inevitably; for the breakup of the spiritual *imperium* had shattered the foundations of the temporal unity; the divine sanction was dissolving into the thin air that gave it birth; and the last vestige of the *principium unitatis* had fallen with Charles' head.

The world, in fact, had outgrown the bonds of the Middle Ages: the doctrine not merely of a divine institution of secular and spiritual authority, but of any extrinsic sanction of the moral law. And thus bereft, there was nothing for it but to reconstruct a general theory of sovereignty *ab ovo*. It was by no accident, but by sheer logical necessity, that Locke had to argue his way to the roots of the human understanding before he could set about formulating a new political philosophy.

[31] Quoted in Ritchie, *Natural Rights*, p. 15.

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THE INVESTIGATIVE FUNCTION OF CONGRESS

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In the winter and spring of 1923–24 a blizzard of congressional investigations swept the national capital. Party lines were tied up, statesmen were snowed under, and Washington officialdom was chilled by a storm of inquiries into the conduct of government departments. Scarcely a corner of the administration escaped inquisition. The subjects of inquiry ranged from the naval oil reserve leases at Teapot Dome and Elk Hill to the administration of the Veterans' Bureau under Director Forbes of dubious fame. Upwards of two-score inquests were instituted by Congress, through its committees, into the official behavior of the executive branch of the national government. In the end, and as a direct result, two cabinet members lost their portfolios.

Such wide and effective use by Congress of its committees for the purpose of inquiry and examination of administrative conduct raised certain questions in the minds of students of government. What were the constitutional limits of the investigative function of Congress? What was the relation of this function to the law-making function and to impeachment? Was punishment by impeachment a satisfactory remedy for official misconduct, or had it become obsolete as too cumbersome? Did the vote of the Senate calling for Secretary Denby's resignation usher in a new process in this country? Should cabinet officials be required to appear on the floor of Congress and answer questions? Would this be preferable to investigating their actions long after they have been performed? Does the steady increase of federal powers necessitate greater supervision by Congress over the President and administrative officers? Have students of politics overlooked a function of Congress frequently and forcibly exercised for the control of administration?

A careful survey of the history of committee activity from 1789 to the expiration of the Sixty-eighth Congress in 1925 discloses

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that there have been, all told, about 285 investigations by the select and standing committees of the House and Senate.[1] Only three Congresses have been barren of legislative inquests, while no administration has been immune. The high-water mark was reached during Grant's eight turbulent years, when incompetence and corruption ran riot through public life; between 1869 and 1877 Congress undertook thirty-seven different inquiries aimed at remedying bad conditions in the administration.

Much American history can be gleaned from the reports of these nearly three hundred investigating committees. For the houses of Congress have employed the inquisitorial function over a wide range of governmental activity. Beginning with the inquiry into the defeat of General St. Clair by the Indians in 1792, and continuing down to the current investigation of the Tariff Commission, this device has been put to many uses. The record shows that the War Department has come most frequently under the inquiring eye. Congressional committees have scrutinized the conduct of all the wars in which the United States has engaged except the Spanish-American war, when President McKinley forestalled legislative inquiry by appointing the Dodge commission. They were responsible for the impeachment of President Johnson and Secretary of War Belknap. They have examined the conduct of the Treasury Department fifty-four times and of the Interior Department forty-one times, with attention centered most frequently on the Indian Bureau and the Pension and Patent Offices. The Government Printing Office has also been submitted to frequent inspection; likewise the Navy and Postoffice Departments. The President has been the subject of investigation twenty-three times, commencing with John Adams and ending with Woodrow Wilson. In fact, no department or activity of the government has escaped inquiry unless it be the Departments of Commerce and Labor since their separation in 1913.

Among the outstanding achievements which must be credited to congressional inquiries are the discovery of General Wilkinson's

[1] Exclusive of inquiries begun but not completed by report to House or Senate.

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part in the Burr conspiracy in 1810; the disclosure of Andrew Jackson's conduct in the Seminole war of 1819–20 and of the light regard in which he seemed to hold certain restrictions of the Constitution; the resignation of Ninian Edwards, minister to Mexico and author of the "A. B." plot, in 1824; the implication of President Taylor's cabinet in the culpable payment of the notorious Galphin claim in 1850; the establishment of the Government Printing Office in 1860; the disclosures of the celebrated Covode committee in the same year in connection with the Lecompton constitution, which helped to pave the way for the election of Lincoln; the far-flung activities of the famous Wade committee which, to all practical intents and purposes, took over part management of the Civil War and assumed a wide range of executive prerogative; the unearthing of the Credit Mobilier scandal of 1872, which jeopardized the political careers of James G. Blaine and Schuyler Colfax; the disclosure of frauds in the star route mail service in 1884; the resignation of Secretary Ballinger after his sensational controversy with Gifford Pinchot in 1911, which contributed to the disruption of the Taft administration and the split in the Republican party in 1912; and the ventilation of the scandals of 1923–24 when President Harding dismissed Director Forbes of the Veterans' Bureau and Secretaries Denby and Daugherty were forced to resign. If space permitted, many more illustrations of investigative activity could be given, all leaving their impress indelibly upon executive policy and action.

The attitude of the executive toward these inquiries has varied at different periods. Occasionally, presidents and members of the cabinet whose reputations or conduct have been assailed on the floor of Congress have asked for investigations. Such requests came from Alexander Hamilton and Oliver Wolcott, secretaries of the treasury; Postmaster General Gideon Granger, President Monroe, Vice President Calhoun, Daniel Webster as secretary of state, and Secretary of War Crawford. More often, on the other hand, the executive has vigorously resisted committee inquiries. President Jackson vehemently repelled the attempts of the Wise committee to investigate his administration.

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President Buchanan protested against the methods of the House in the Covode inquiry. And, more recently, President Coolidge criticized the procedure of the Couzens committee in employing Francis J. Heney to prosecute its investigation of the Internal Revenue Bureau.

In short, an analysis of the use of the investigating committee in American history clearly shows that in it Congress has an instrument, often blunt and clumsy to be sure, which it has consistently employed to supplement the power of the purse and the law-making power and to supplant in large measure the even more unwieldy power of impeachment. It is, indeed, singular that this device, long familiar to historians on account of the influence it has had upon the results of political campaigns and in war-time, should have been so largely ignored by political scientists, upon whose interest, as a usage of the American Constitution, it has a strong claim.

II

Turning to the constitutional and legal aspects of this inquisitorial power, we come at once upon controversial ground; for the law governing the investigative powers of Congress and its committees is still unsettled.[2] In fact, since the first assertion of these powers on the part of Congress and its committees, various views have been entertained relative to their merits, by members of Congress and executive officers, by judges of the Supreme Court, and by commentators on the Constitution. The powers in question are the power of investigation itself and its three auxiliaries: the power to compel the attendance and testimony of witnesses; the power to compel the production of papers and information; and the power to punish for contempt. Of these, the last is the most vital, for upon it the others depend for their effective exercise. Something may therefore be said at once about its constitutional aspects.

While the power of committing witnesses for contempt is not explicitly given to the House or Senate by the Constitution, it is

[2] See Potts, "Power of Legislative Bodies to Punish for Contempt," in 74 *Pennsylvania Law Review*, 691, 780 (1926). Also see Landis, "Constitutional Limitations on the Congressional Power of Investigation," in 40 *Harvard Law Review*, 153 (1926).

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evident from congressional practice and judicial interpretation that the power is considered to reside there by necessary implication in support of the legislative function. In his "Precedents of the House of Representatives" Hinds records fifty cases occurring between 1812 and 1907 in which the House or Senate held witnesses in contempt for refusal to give oral or documentary information or for other offences. The two outstanding cases of contempt of a house of Congress since 1907 were those of Harry F. Sinclair and Mally S. Daugherty in 1924. Sinclair was cited to the United States district attorney for the District of Columbia by the Senate for refusal to answer interrogatories put to him by the Senate committee on public lands which was conducting the oil inquiry. Subsequently, he was indicted by the District grand jury for contumacy. The case was tried in the criminal court of the District and appealed to the District Court of Appeals.[3] Thereafter Congress passed the Walsh Act, in effect depriving Sinclair of the right of appeal, and the District Court of Appeals accordingly declined to review the decision of the lower court. Sinclair thereupon petitioned the United States Supreme Court for a writ of certiorari, which was denied on December 6, 1926. Daugherty was taken into custody by a deputy sergeant-at-arms of the Senate for failure to appear and testify before the select committee which investigated the Department of Justice. He obtained a writ of habeas corpus from the district court for the southern district of Ohio which, after hearing, discharged him from custody upon the ground that the investigation ordered by the Senate in aid of which his testimony was sought was wholly outside the powers of the Senate, involving the exercise of judicial, not legislative, power, and therefore that the process was void. The case was carried on appeal to the United States Supreme Court, where it is now (December, 1926) awaiting decision.[4] Great interest has been expressed in this case by constitutional lawyers. It is hoped that the Court will settle once and

[3] 68th Cong., 1st sess., S. Rep. 299, ser. no. 8220; U. S. v. Sinclair, 52 Wash. L. Rep., 451 (1924).

[4] 68th Cong., 1st sess., S. Rep. 475, ser. no. 8221; *ex parte* Daugherty, 299 Fed. 620 (D. C. 1924).

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for all this perplexing question which is now presented to it in such tangible form.

In order to fortify itself in the exercise of this power, Congress has provided by statute that a person summoned as a witness who fails to appear or refuses to testify shall be punished by fine or imprisonment.[5] It is further provided that the fact of contumacy of a witness shall be certified by the speaker of the House or the president of the Senate under seal to the district attorney of the District of Columbia.[6]

Coming to the courts, we find that there have been upwards of fifty judicial decisions touching the power of either house of Congress or a legislative assembly to punish for contempt, in order to make its own inquiries, or those of its committees, effective.[7] Of these fifty-odd decisions, four are especially relevant to our study, i.e., Anderson v. Dunn, 6 Wheat. 204 (1821); Kilbourn v. Thompson, 103 U. S. 168 (1880); In re Chapman, 166 U. S. 661 (1897); and Marshall v. Gordon, 243 U. S. 521 (1917).

In Anderson v. Dunn the Supreme Court was unanimous in finding that the power of punishing for contempt even others than their own members was possessed by both houses of Congress by necessary implication. A general power to punish for contempt was held to be vested in the House of Representatives as a necessary incident to the exercise of its functions, and its adjudication was held sufficient to establish the fact of contempt.

In Kilbourn v. Thompson the Supreme Court held that, although the House can punish its own members for disorderly conduct, or for failure to attend its sessions, and can decide cases of contested elections, etc., and may, where the examination of witnesses is necessary to the performance of its duties, fine or imprison a contumacious witness, the Constitution vests no general power in either house to punish for contempt. In deciding this case the Court did not pass upon the existence or non-

[5] Revised Statutes, sec. 102.

[6] *Ibid.*, sec. 104.

[7] See "Digest of Decisions and Precedents," Sen. Misc. Docs., 53d Cong., 2d sess., ser. no. 3178.

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existence of such a power in aid of the legislative function. It overruled Anderson v. Dunn only in so far as the latter held that the resolution of the House finding a person guilty of contempt was conclusive evidence of the fact. The subject matter of this investigation was judicial and not legislative. It was then pending before the proper court, and there existed, according to the opinion, no power in Congress or in either house thereof, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership, and consequently no authority to compel a witness to testify on the subject.

In the case of Chapman, another contumacious witness, the Supreme Court affirmed the right of Congress to punish for contempt in cases to which its power properly extends under the expressed terms of the Constitution. The Court held that the Senate had the right to conduct the investigation under its power to expel members, and could, therefore, have punished the recalcitrant witness for contempt, but that Congress might also make such a refusal to testify a misdemeanor, as it had done in the act of 1857. The power to punish for contempt remains in each house of Congress, according to the opinion, and it cannot be held that a statute is invalid because it provides that contumacy in a witness called to testify in a matter properly under consideration by either house, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United States.

In the case of Marshall v. Gordon the question of the implied power of the houses of Congress to punish for contempt was fully considered by Chief Justice White, and it was held that "from the power to legislate given by the Constitution to Congress there was to be implied the right of Congress to preserve itself, that is, to deal by way of contempt with direct obstructions to its legislative duties."[8] The instances of punishment by the houses of Congress for contempt which the court approves are instances of "either physical obstruction of the legislative body in the discharge of its duties, or physical assault upon its members for

[8] 243 U. S. 537 (1917).

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action taken or words spoken in the body, or obstruction of its officers in the performance of their official duties, or the prevention of members from attending so that their duties might be performed, or finally with contumacy in refusing to obey orders to produce documents or give testimony which there was a right to compel."[9] In this opinion, in the most recent case of its nature, the entire court concurred. It was further declared that the power, even when applied to subjects which justify its exercise, "is limited to imprisonment, and such imprisonment may not be extended beyond the session of the body in which the contempt occurred."[10]

The conclusion to be derived from these contempt cases may be summarized thus: In addition to the express power to "punish its members for disorderly behaviour" (Constitution, Art. 1, Sec. 5, Cl. 2), each house has an implied power to punish outsiders for contempt, but no such power is implied in aid of a proceeding outside the jurisdiction of the house; however, a presumption of validity attaches to a resolution of either house, as it does to legislation of both houses jointly, and an investigation of a public officer or a department may be presumed legislative in purpose and therefore valid until the contrary is shown. It would appear, furthermore, that it is unnecessary to derive this power from the English Parliament when it was a high court, because the power, when exercised by either house of Congress, is a judicial function used in aid of a legislative function. A house may employ any means necessary in its judgment to the execution of its law-making power. The notion that the power to punish for contempt is to be exercised by Congress only when the latter is acting in a judicial capacity (as in case of an impeachment trial) would appear to be inaccurate. So to limit it would deny its use to punish disorderly conduct in the presence of the house. No decision so limits it, and one decision[11] and a well-considered dictum[12] oppose such a limitation. It would also appear that

[9] *Ibid.*, 543.
[10] *Ibid.*, 542.
[11] Anderson v. Dunn, 6 Wheat. 204 (1821).
[12] Marshall v. Gordon, 243 U. S. 541 (1917).

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a house may punish for contempt only such witnesses as refuse to reply to questions or furnish information directly pertinent to the subject-matter of the inquiry, and which do not call for self-incriminating answers; that neither branch of Congress is the final judge of its own powers and privileges where the private rights and liberty of the citizen are at stake, but that the legality of such action may be inquired into and examined by courts of competent jurisdiction; and, finally, that while a house has an inherent discretionary power as to the choice of the method by which information shall be constitutionally obtained, this discretionary power is subject to examination and review by the proper tribunals.

III

We have viewed the investigative function of Congress in its historical and legal aspects. It will now be interesting to note the relation between the activities of investigating committees and the exigencies of party politics. Any adequate analysis of the inquiries of congressional committees must take account of their political motivation; for it is evident that the influence of party has sharpened the edge of the inquisitorial sword. Indeed, all the great fundamental political issues which have agitated the nation since its birth are mirrored in these investigations. Radicalism and conservatism, federalism and states' rights, public lands and slavery, woman suffrage and immigration, Indian affairs and prohibition, the tariff and internal revenue—all have had their repercussions in committee inquiries. The riddle of the parties may be read, in truth, in these activities. But if partisan acrimony has exacerbated the issues by which the fiber of the Republic has been tested and has reflected a lurid light upon them, it has also whetted an appetite to root out corruption from the national administration and has quickened the effectiveness of congressional control of the executive through the medium of the investigating committee. The hope of gaining a partisan advantage is less open to criticism when it results in the disclosure of some real abuse, while the presence of a spirited opposition usually prevents the punishment or defamation of the innocent. If, therefore, the itch for power and partisan malice have been

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at the bottom of most congressional investigations, they have also been both a salutary force in the direction of good government and a strong support of the investigative function.

The hidden motives which prompt inquiry into governmental departments and officials are not merely political in the larger sense of the term. Resolutions of inquiry are sometimes sprung by individual members with malice prepense in the hope of besmirching an enemy, warding off an attack, or gaining publicity. Many examples of investigations animated by meaner motives such as these could be given. Ninian Edwards' attack on Secretary Crawford in the "A.B." plot of 1824 is one. The inquiry into the conduct of H. Snowden Marshall, district attorney for the southern district of New York, in 1917, is another. Few, if any, in fact, of the investigations carried on between the First and the Sixty-ninth Congresses were devoid of personal strife or partisan purpose. The colorful threads of political motive can be traced throughout the patch-quilt fabric which upwards of three hundred inquiries have woven between the legislature and the executive.

The play of political passions may be noted in a few of these historic struggles. The very first inquiry on record—that into the humiliating collapse of General St. Clair's expedition against the Indians—was launched by the adherents of Jefferson in an effort to influence public opinion in the election of 1792 against Hamilton's selection as secretary of the treasury for a second time.[12a] Again, in 1793, the House inquiry into Hamilton's official conduct in response to the Giles resolutions of condemnation was part of Jefferson's plan to drive his enemy from the cabinet.[13] Coming down to the thrilling thirties, we encounter a period of epochal party battles and fascinating personalities which were reflected in nine investigations launched by the opposition in Congress against Jackson. The inquiries which led to the impeachment of President Johnson in 1867 were also animated by strong political passions, while the frequent scandals of Grant's administrations were a tempting invitation to those

[12a] Bowers, *Jefferson and Hamilton*, 175.
[13] *Ibid.*, 199–203.

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who sought to assail the government for political purposes. The Credit Mobilier, the star route frauds, the salary grab, and the Belknap impeachment—to mention only a few—were used to manufacture political capital. The competition between the parties for the spoils of office has been reflected through the years in repeated investigations of the customs houses, the Government Printing Office, the Bureau of Pensions, and other branches of the civil service. The congressional investigation which resulted from the Ballinger-Pinchot controversy in 1910–11 had a distinct political flavor, while it will be well remembered that the series of inquiries which absorbed the Senate in the spring of 1924 savored of personal spleen and party politics. The most recent example of a distinctly political inquiry was that ordered by the Senate on March 11, 1926, into the Tariff Commission.

These illustrations will suffice to indicate the presence of party considerations and political interests in investigations of the executive conducted by committees of Congress. This is the more notable when contrasted with the absence of such considerations from the inquiries of similar committees of the British House of Commons. As a rule, the composition of these committees is independent of political motive, and almost invariably their work is concerned with the determination of questions of fact or with the formation of judgments based upon facts and the opinions of experts. Party fights seldom occur, because the British select committees are not intended to be the tools of party tactics, but to assist the work of the House.[14] With us, however, party affiliation makes for party prejudice, and our legislative committees do not exercise their quasi-judicial duties impartially. Their members feel obligated to advance the interests of the party which has elected them, sometimes even at the expense of the facts, and they rationalize their actions by identifying party interest with the general welfare. The temptation to transcend the proper limits of a public inquiry is, of course, very strong, and the disposition to enter the domain of private life and personal affairs very great. To gratify personal spleen or to disparage the opposition, excuses are often invented to

[14] Redlich, *Procedure of the House of Commons*, II, 188–189.

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justify the examination of immaterial witnesses. The door is open to an indefinite search after evidence and the proceeding converted into a fishing excursion. From political duties to private life has been an easy transition for the investigators, while the suspension of the usual rules of evidence and judicial procedure has too often transformed the legislative committee into a tribunal of inquisition. Inquiry into domestic life is not, of course, among the legitimate purposes of public investigations.

But if many congressional investigations have been animated by partisanship in their inception, their methods, and their recommendations, it does not follow that they have been without benefit to or effect upon the public service. The value of many of these inquiries arises from the exposure which they bring and the cautionary example they set. The government is ventilated, administrative evils are remedied, and a warning is sounded of the unfortunate consequences which await other malefactors. That there is a possibility of abuse for partisan purposes, and that sometimes private affairs are unduly exposed to the public gaze is perhaps inevitable in a government of fallible men, but the injuries thus done are inconsiderable compared to the evils that would result from depriving Congress of the power to supervise the public business or from hampering its committees from getting at the facts by a narrow legalistic attitude on the part of the courts.[15] In the final analysis, therefore, investigation may be viewed as the legitimate function and duty of a political party. It would appear to be part of its duty to reveal the errors, shortcomings, and misdeeds of the representatives of the other party in office. Thus a political party, to borrow a Hobsonian phrase, carries about with it an alembic which transmutes its leaden instincts into golden conduct.

IV

This brings us to a consideration of the theory of investigation as a function of Congress and of representative bodies generally. Here the first question is, What were the circumstances which gave rise to the use of this device in America? Without going

[15] Cf. Potts, *op. cit.*, 813.

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into the English antecedents of inquisitorial activity, which it would be interesting to do if space permitted, it would appear that such activity is immediately traceable to the separation of the three departments of the federal government set up by the framers of the Constitution. Their plan was so to separate the legislative, executive, and judicial branches of the government as to prevent the abuse of power by any one branch, and thus to safeguard individual liberty. But this balance of power and dispersion of responsibility proved an unworkable system of government and promptly precipitated a struggle for supremacy between the President and Congress, which, indeed, has gone on ever since. In the course of this contest, the events of which are familiar to all students of our history, Congress has steadily tended to encroach upon the executive and the executive has quite as steadily sought to resist such encroachment.

In England the outcome of two centuries of conflict between king and Parliament was the victory of Parliament. Several sanctions for enforcing ministerial responsibility to the House of Commons became well established in parliamentary practice. These were the power of impeachment, the legal sanction of budget control, the annual Army Act, ministerial questions, votes of censure, and the inquisitorial power. At the time the general English system of constitutional government was introduced into the American scheme, subject, of course, to certain necessary modifications, parliamentary commissions of inquiry had come to be appointed either to unearth suspected abuses or to obtain information for the purpose of legislative reform. Due to the dependence of the executive upon the legislature, this method of control has proved to be a strong sanction in the English political system, even though employed with comparative infrequence.

But in the United States the struggle for congressional control has failed to eventuate in any such clear-cut decision. Under the incubus of separated powers, the rivalry has resulted as often in deadlock as in success for either side. The absence of ministerial responsibility or of some arrangement which would bring the administration face to face with Congress has left the issue

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unresolved. To be sure, Congress has inherited or acquired several means of control. They are, in brief, the power of the purse, the right of impeachment, the inquisitorial power with the corollary power to punish for contempt, the use of minute regulatory legislation, and the privileges of the Senate to confirm or reject nominations and to accept or reject treaties. Of these sanctions, the procedure of investigation might be expected not to constitute a means of control so far as any effective discipline of the administration is concerned and to exist solely as a method of securing information *de lege ferenda*.[16] Historical analysis shows, however, that the committee of inquiry, although unknown to the Constitution and neglected or ignored by writers on American government, has been frequently and effectively used against the executive.

The investigative activity of congressional committees has arisen, then, from the artificial separation of the legislative and executive departments and in response to the need of an agency capable of holding the administration to a strict accountability. With the development of an elaborate administrative department at Washington and the great increase of powers exercised by the executive branch, this need has become more and more insistent. Governmental efficiency, the protection of private rights, and the execution of legislative policy as the will of the state demanded of Congress that it devise methods of supervising the administration of the law and the conduct of executive officers. Ordinarily, to be sure, the exercise of discipline, direction, and supervision by the administrative officials themselves promotes honest and efficient government, while individuals may apply to the courts for the protection of their rights. But when these means are ineffective or inaccessible, as has frequently been the case, legislative control is the last resort. The principle that the proper office of a representative assembly is to watch and control the government has, in fact, been affirmed by such authorities as Mill, Wilson, Goodnow, and Ford.

As a means of control of the executive, the congressional committee of inquiry has three distinct uses or functions: to aid in

[16] Cf. Goodnow, *Comparative Administrative Law*, Vol. I, Div. 3, Chaps. 1 and 2.

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legislation, to supervise the administration, and to inform public opinion. These may be treated briefly in the order named.

(1) *To aid in legislation.* This is the most familiar and least challenged use of the investigative function. It is derived from the law-making power, and as such is sustained by all shades of authority and opinion. It is available when the legislature is seeking information deemed necessary for framing new legislation or detecting defects in laws already enacted or in voting supplies. Inquiries having these ends genuinely in view are everywhere regarded as legitimate exercise of the legislative power. They are obviously a means of controlling executive policy and action.

(2) *To supervise the administration.* This was the first use of the committee of inquiry and is by far the most important end to which inquiry can direct itself, for upon it alone can the people depend for knowledge of the honesty and purity of government. Especially is this true under a weak and lenient president, like Grant, who is unable, despite the best of intentions, to keep his house in order. When a president surrounds himself with men like the Babcocks and Belknaps of Grant's day, or the "Ohio gang" of Harding's time, who regard office as the spoils of victory rather than a public trust, or when mere incompetence in the person of a Denby or a Barry comes into office, the congressional committee of investigation is the last defense of the people. Its power is derived in this case from the power of impeachment given by the Constitution to the House of Representatives. As such, it is beyond question. It is available at all times to committees of either chamber, although a Senate committee cannot avow impeachment as its purpose, since this power belongs to the House alone. But legislation in some form is usually required to remedy an abuse, and if a Senate committee of inquiry announces a legislative intent, it is a principle of law that the courts will not question its motives.[17]

This type of inquiry discloses the actions of the executive and permits Congress to function efficiently as an organ of criticism.[18]

[17] A final ruling on this point is expected from the Supreme Court when it delivers its opinion in the case of McGrain v. Daugherty.

[18] Willoughby and Rogers, *Introduction to the Problem of Government*, 213–214.

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It fixes responsibility, otherwise confused under our multiple agency system, for every questionable administrative act and informs Congress when the executive is opposed to the enforcement of the law and when legislative action is therefore required.[19] It watches, studies, corrects, and perfects our administrative departments. It discovers when a well-established policy of Congress has been reversed by a purely administrative act without the knowledge or sanction of Congress, whether it relates to the conservation of the public domain, or the maintenance of naval oil reserves, or the disposal of alien property, or the care of veterans, or political espionage, or what not. It contemplates a constructive remedy of administrative abuses. In a period of "chronic presidential defeasance" such as we have had since the breakdown of Woodrow Wilson, it flourishes as a natural remedy for an otherwise irresponsible and intolerable administration.[20] It calls ministers to account and is a more satisfactory remedy for official misconduct than impeachment. It affords a convenient channel through which the representatives of the people can get at the conduct of officials who have acquired greatly increased control over their lives. In short, it reveals inefficiency and dishonesty—serious evils which often cannot be exposed in any other way.

(3) *To inform public opinion.* Hardly less important than the use of committees of inquiry to supervise the administration is their influence upon and their expression of public opinion. The power and duty of the legislature to inform the voters regarding the administration of existing laws, to turn the searchlight on their government, is implicit in the whole theory of democracy and popular sovereignty. The debates on the early investigation resolutions in the constitutional convention clearly show that it was in the minds of the fathers. The duty of Congress to exercise this function has become increasingly urgent with the growth of governmental powers, the widening of the suffrage, the enlarged participation of the electorate in the affairs of

[19] Cf. Freund, "American Administrative Law," *Polit. Sci. Quar.*, IX, 415.

[20] Jenks, "The Control of Administration by Congress," in *Amer. Rev.*, Nov.–Dec., 1924.

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government, the development of new means of communication, and the increase and dissemination of knowledge. It has been recognized by writers on government. As far back as 1888, Bryce wrote of the reciprocal influence of public opinion and legislative agencies.[21] Thirty-three years later he found public opinion still the ruling power in the United States.[22] It seemed to him in 1921 a wiser and stronger check upon the President than the Senate which the founders had set up to guide him.[23]

The device of investigation is admirably adapted to this end. Both in the states and in the nation, legislative inquiries have served as an educational force and as a vehicle of the public will.[24] As a means of stimulating, guiding, and expressing the latent mind of Leviathan, the power of Congress to inquire, to inspect, to turn on the light, is of supreme importance. Through it an enlightened public opinion becomes the strongest check upon executive abuses. Beyond doubt, the possibility of investigation and exposure lays a restraining hand upon administrative officers. It makes them attentive to the demands of Congress and so strengthens the directive power of Congress over them. On the other hand, it restores public confidence, if the inquiry is honestly conducted and no corruption is found, and clears the names of the innocent. If dishonesty is shown, an aroused public demands the removal of the guilty, which follows quickly if the President is responsive to public sentiment. At least, that is the theory of it. And, as a rule, it has worked out that way. In 1924, however, the public wearied in time of the reiterated scandals and ceased to respond to the cry of the reformer. The people were first dismayed, then bewildered, and finally bored. The way the inquiries were conducted, the type of witnesses heard, the kind of evidence accepted at face value, the ignorant questions of committee members, and the apparent party bias of the investigators prompted the public to discount the full significance of the disclosures and limited the effectiveness of the investiga-

[21] *American Commonwealth*, II, 267.
[22] *Modern Democracies*, II, 122.
[23] *Ibid.*, 162.
[24] There were 112 investigations in Missouri from 1820 to 1920.

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tions. And yet these same senatorial inquiries (1924) aroused sufficient concern among the people for the purity of their government to force two members of the President's cabinet to retire. Such resignations, indeed, have not been rare events. The names of Randolph, Barry, Cameron, Belknap, and Ballinger may be recalled in this connection. Public opinion can sometimes drive an incompetent or dishonest official from office even without an inquiry. But inquiry centers the public eye upon a particular officer or department; the public, as a rule, is admitted to the hearings; a complete account of the proceedings is published, and the people are kept currently informed upon how the administrative authorities are behaving.

There are, to be sure, manifest defects in the theory of democratic control. It overlooks the breach between the politicians and the people; it disregards the influence of lobbies engineered by special interests; and it postulates a constantly aroused and militant public opinion.[25] But these defects only emphasize the necessity and importance of the congressional investigation. For it is the last bulwark of the nation against abuse of power by a bureaucracy which is losing touch with the people. It is their final defense against the special interests which seek to control the government for their own ends. And, finally, it protects an ignorant and apathetic people from its own weaknesses, though some of its force is spent in vain where the public fails to respond.

Investigation as a legislative function has a number of distinct advantages. It is, in the first place, a substitute for the unwieldy and cumbersome process of impeachment and is free from the dangers and disadvantages to which impeachment is subject. It does not involve the state in the serious inconvenience of budget refusal. And it provides a more effective control than mere resolutions requesting information "if compatible with the public interest." Great advantage lies in facts thoroughly established, charges and imputations carefully and painstakingly sifted, and evidence judicially canvassed. It is, in fact, no light matter to have a committee of inquiry pronounce, with all the authority that comes from a careful and judicial examination of

[25] Hobson, *Free Thought in the Social Sciences*, 188.

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all the elements in the case, an official guilty of negligence, incapacity, or dishonesty. The possibility of investigation sounds a warning to executive and administrative officers, high and low, so to behave as to avoid the danger and inconvenience of inquiry. Like the sword of Damocles, it hangs over all, swifter than impeachment, more penetrating than the courts. It is a safeguard against imbecilities as well as corruption. It is the American method of achieving ministerial responsibility without reducing power. It is one of the checks in a system of checks and balances. It reflects fairly well the mind of the nation from which indirectly it receives power and for which it exercises it.

Secondly, it is a substitute for a system of administrative courts needed to protect the citizen from the arbitrary action of subordinate officials. With our industrial and commercial development, the extension of the sphere of governmental regulation has increased the contact of the public official and the citizen in numberless ways, and hence the danger of friction and dispute. Investigation not only tends to maintain honesty and efficiency in government, but it also safeguards the rights of individuals from flagrant violation.[26]

In the third place, it is a security against the misuse of opportunity. There is always the danger that public positions will become places of profit, that office will be employed as a means of private plunder. "When any set of persons get opportunity they are naturally inclined to use it for their own advantage," says Professor Ford.[27] It follows, therefore, that "the essence of representative government is this: that a watch is kept on the behaviour of those entrusted with power."[28] The representatives must be secured in the exercise of their proper function as intelligent critics of the government.

In the fourth place, the hope of breaking for once and all the vicious circle from despotism to republicanism and back again, which has been the experience of political history, lies in a

[26] Cf. James T. Young, "The Relation of the Executive to the Legislative Power," in *Proceedings of Amer. Polit. Sci. Assoc.*, I, 53 (1904).

[27] *Representative Government*, 200.

[28] *Ibid.*, 202.

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constitutional arrangement enabling the legislative authority to control the executive without impairing the force and celerity of its action.[29] The English have solved this age-old problem by making their cabinet immediately responsible to the House of Commons and ultimately to the electorate and public opinion. But the partition of powers and institutions in the American system has hampered direct contact with administration and compelled a resort to the investigative function. Under such circumstances the representative assembly becomes the board of directors of the public corporation of which President and cabinet are the executive management and the citizens the shareholders.[30]

Over against these advantages of the inquisitorial function are certain distinct limitations and disadvantages. In the first place, there are limitations of procedure. At best, congressional investigation is a blundering, crude, clumsy, and tedious process for getting at the truth, formulating criticism, or achieving effective control. It is an expensive business, though it has on occasion saved the country many times its cost. It is time-consuming, dragging on interminably and diverting the attention of the committee members from their other legislative duties. Many months often elapse between the inception of an inquiry and the final report of the committee and its disposition by the house, so that, when the facts are finally and fully determined, the matter has lost its news interest for the public. Inquiry is an instrument unsuited to frequent or continuous employment and justified only by grave circumstances. Furthermore, in order to secure the appointment of a committee of investigation, the support of a majority of those present in the chamber is necessary, which is difficult to obtain when both the majority of the house and the executive belong to the same party. The administration leaders will resort to every parliamentary stratagem to avert the danger.[31] Many inquiries are proposed which fail to receive the

[29] Ford, *Representative Government*, 307.

[30] W. F. Willoughby, *The Problem of a National Budget*, 96–99.

[31] Witness their tactics in the defeat of the proposal for an investigation of the Aluminum Corporation of America.

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support of the rules committee or the house and consequently fall through. Others are authorized but never reach completion, either because no evidence can be obtained, witnesses refusing to testify, or because of lack of sufficient time to make the inquiry before the end of the session, or for some other reason.[32] There is also the danger that the committee of inquiry may come to dominate the legislature at the expense of its other activities;[33] while the prime procedural defect lies in requiring the same committees to perform the duties of legislation and supervision under the same set of rules.

In the second place, the hostile attitude of the legislature toward the executive, implicit in their traditions, impairs the fairness of the investigative function. As we noted earlier, many inquiries have been mere fishing excursions actuated by political malevolence or determined by the exigencies of an election campaign or bent upon gratifying personal animosities or casting reflection upon an opposite administration. Under such circumstances the congressional investigation becomes, at best, "a grand jury seeking the basis for an indictment of political misdeeds. At its worst, it is a gossip-broadcasting station, a scavenger of the private drains responsible for public malady."[34] The proceedings, indeed, tend to take on a sensational character which Walter Lippmann describes as "that legalized atrocity, the Congressional investigation, where Congressmen, starved of their legitimate food for thought, go on a wild and feverish man-hunt, and do not stop at cannibalism."[35]

The third defect of the investigative function is meddlesome interference in the details of administration. Investigating committees have sought at times to go beyond their depth; they have dabbled and dictated in matters outside their competence; they have too often been parliamentary busybodies. They have

[32] Witness the investigation of the Department of Justice in 1924 by the Brookhart committee which was held up by an order issued by Federal Judge Cochran preventing the committee from examining the bank records of Mr. Mally S. Daugherty, 299 Fed. 620 (1924). See also 40th Cong., 1st sess., H. Journal 126.

[33] Ford, *Representative Government*, 237–8.

[34] Jenks, *op. cit.*, 599.

[35] *Public Opinion*, 289.

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imposed an unnecessary burden upon the time of the executive and have been a nuisance to the bureaus. Sometimes they have made it difficult for executive officials to act promptly and fearlessly. They have upset the personnel of the government, with consequences not always to the public advantage.[36]

The fourth and greatest disadvantage of this method of control is the fact that the executive branch is able at times to escape penalty for wrong-doing. In some cases this occurs where a majority of the members of the committee or chamber are in political sympathy with the administration or where the opposition fears retaliation. The committee's report is then a variant of the theme that "no one is guilty, but he would better not do it again." It occurs in other cases where public opinion and the press fail to rebuke the officers involved. Where minor administrative officials are concerned, the contact between Congress and the public opinion of the country is very slight. And even where wrong-doing is traced home to higher officials, the capacity of the public to respond seems to have definite limitations. If the public conscience does not censure the culprits, they will probably go scot free. "And after all is over and the murder out, probably nothing is done. The offenders, if anyone has offended, often remain in office, shamed before the world and ruined in the estimation of all honest people, but still drawing their salaries and comfortably waiting for the short memory of the public mind to forget them."[37] Woodrow Wilson regarded inquiry as a defective means of exercising searching supervision, in that it does "not afford it [Congress] more than a glimpse of the inside of a small province of federal administration. Hostile or designing officials can always hold it at arm's length by dexterous evasions and concealments. It can violently disturb, but it cannot often fathom, the waters of the sea in which the bigger fish of the civil service swim and feed. Its dragnet stirs without cleansing the bottom. Unless it have at the head of the departments capable, fearless men, altogether in its confidence and entirely in sym-

[36] Secretary Mellon advised President Coolidge to this effect during the early stages of the Couzens inquiry into the Bureau of Internal Revenue.

[37] Wilson, *Congressional Government*, 278.

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pathy with its designs, it is clearly helpless to do more than affright those officials whose consciences are their accusers."[38]

The final limitation under which the investigative function labors may be expressed in the question: *Quis custodiet custodes?* Who will watch the watchmen? While the committees are inspecting the executive, what is to prevent them from employing their opportunities for private or party advantage? Professor Ford answers this question by the suggestion that the representatives be so situated that they can use their authority only on public account. They must be denied access both to official patronage and to the public treasury. They must be personally disinterested and have no power to vote offices and appropriations to their own use. They must not share in the appointing power or be able to select what business they shall consider. "A representative assembly is bound to become a public nuisance if it is allowed to do anything more than watch over the government and pass judgment on its recommendations. Any participation in the work of the government is fatal to the position of the assembly as an organ of control. It cannot at the same time be a participant in the exercise of administrative authority and also be a control over executive authority, any more than a man can act as an impartial judge in his own case."[39] The best securities against the misuse of opportunity by legislators would be to abolish the legislative budget and to put it beyond their power to create and fill salaried offices and to originate directly either taxation or expenditure. When the representatives of the people are no longer able to solicit postoffices and bridges for their constituencies or plums and perquisites for their supporters, the assembly will be free to function as an organ of public control. All financial initiative should be entrusted to executive discretion. Budget control in legislative hands will sufficiently secure the supervision of the government, but to place the dispensation of patronage and emoluments in the same hands permits the perversion of representative institutions and failure to perform their proper office.

[38] Wilson, *Congressional Government*, 270.

[39] Ford, *Representative Government*, Chap. VII.

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In conclusion, it seems safe to say that the investigating committee has acquired a permanent, important, and salutary place in governmental practice. On the whole, its use has clearly justified its existence. Members of Congress do not fully appreciate the important part it has played in the course of our history. Busied with the tasks of the present, most of them enjoying short tenures only, they fail to realize that Congress has kept pace with the expanding powers of the President, thanks, in large part, to these legislative inquests. They do not suspect that the cumulative effect of almost three hundred inquiries has been a change in our constitutional arrangements not envisaged by the Fathers. The investigating committee has become more than a particular form of parliamentary procedure. Together with the standing committee system, it is "the buckle that binds, the hyphen that joins" the legislature to the executive. It has taken the place of the cabinet in the English constitutional system, has provided an effective means of control, has informed public opinion, and has considerably augmented the power of Congress. In it may be discerned the inevitable extra-constitutional growth which, like the bi-party system, has spread its influence throughout the federal government.

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CONSTITUTIONAL LAW IN 1925–1926

THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1925

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The Supreme Court of the United States during its 1925 term seems to have taken a vacation from the solution of major constitutional problems. Its activities provided very little newspaper copy. Most of the more important decisions could have been pretty accurately forecast upon the basis of previous adjudications, while the constitutional questions raised which could be deemed in any sense novel related to more or less technical or trivial matters. A considerable number of the more interesting cases dealt merely with matters of statutory construction and did not present constitutional issues at all. This comparative dullness of the judicial year's work is in sharp contrast with the achievements of the preceding term of 1924, in which at least six cases of genuinely first-rate importance were decided;[1] while the Court has begun its 1926 term by handing down its epoch-making decision in the Myers case relating to the President's power of removal,[2] and has followed it by the far-reaching ruling in the municipal zoning law case.[3] This absence of judicial fireworks in the 1925 term may well serve to emphasize two facts sometimes overlooked in an appraisal of the work of the Supreme Court. The first is that in any judicial year an overwhelming proportion of the work of that tribunal is and must necessarily be of a humdrum and inconspicuous variety; useful and important in the sense that technical, detailed, and even trivial questions need to be answered authoritatively, but certainly not spectacular. The second point is that the Supreme Court must take

[1] Ex parte Grossman, 267 U. S. 87 (sustaining the President's power to punish for contempt); Michaelson v. United States, 266 U. S. 42 (upholding jury trial requirement in cases of criminal contempt); Carroll v. United States, 267 U. S. 132 (search and seizure case); Gitlow v. New York, 268 U. S. 652 (upholding New York criminal anarchy statute); Pierce v. Society of Sisters of Holy Name, 268 U. S. 510 (Oregon school law case); Frick v. Pennsylvania, 268 U. S. 473 (extra-territorial inheritance taxation by states). All of these are commented on in the REVIEW, vol. 20, p. 80 et seq.

[2] Decided October 25, 1926.

[3] Decided November 22, 1926.

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its work very largely as it comes to it. It cannot determine or control the content of its docket; it can decide important constitutional questions when they are presented to it in litigation between parties appearing at its bar and not before. A comparative lack of outstanding constitutional decisions, therefore, indicates neither an abnormal nor an unhealthy state of affairs.

A. QUESTIONS OF NATIONAL POWER

I. REGULATION OF COMMERCE

The well known doctrine of the Shreveport Case[4] was held, in Colorado v. United States,[5] to support an order of the Interstate Commerce Commission permitting an interstate carrier to abandon the operation of a branch lying wholly within a state, on the ground that the loss resulting from such operation imposed a serious burden upon the railroad's interstate business. The Commission had found that the maintenance of the spur in question made necessary such excessive expenditures from the common resources of the system as to lessen the ability of the carrier properly to serve interstate commerce. Said the Court: "The obligation assumed by the corporation under its charter of providing intrastate service on every part of its line within the state is subordinate to the performance of its federal duty." The order of the Commission was based on a balancing of local inconvenience against need for protection to interstate commerce and was adequately supported by the evidence.

In Chicago, Indianapolis & Louisville Rwy. Co. v. United States[6] the Interstate Commerce Commission is held to have power to compel four steam roads to cease discrimination against an electric railroad engaged in the interstate transportation of freight. This is in face of the fact that three of the roads have no physical connection with the electric line, and the further fact that compliance with the order virtually compels the four roads to share with the electric line traffic which they have been adequately handling. Such diversion of business does not deprive them of property without due process of law. The case is in a sense a corollary of the case of United States v. Hubbard[7] which upheld the Commission's power to prevent discrimination against interstate commerce by an electric road.

[4] Houston, E. & W. T. R. Co. v. United States, 234 U. S. 342.
[5] 271 U. S. 153.
[6] 270 U. S. 287.
[7] 266 U. S. 474. See comment in the REVIEW, vol. 20, p. 83.

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In a series of cases beginning with Browning v. Waycross in 1914[8] the Supreme Court has faced the question whether work done in a state (i.e., the installation of equipment, and the like) subsequently to the shipment of goods in interstate commerce is part of the interstate transaction and thus free from local taxation or regulation. The test thus far applied seems to have been whether this labor was necessary in order to induce the sale of the goods across the state line. In other words, the character of the local acts was held to be governed by the intimacy of their relation to interstate commerce. In Kansas City Structural Steel Co. v. Arkansas[9] the Supreme Court, although relying upon the cases just mentioned, allows the essentially local nature of the subsequent transactions to cut short the interstate character of the shipment of goods into the state before their actual delivery to the consignee. Here a Kansas firm, under contract to build a bridge in Arkansas, shipped structural steel to its sub-contractor in that state, who used the material in the building of the bridge. It was held that the delivery of the steel to the sub-contractor was an activity falling within the limits of intrastate business, and a penalty exacted for conducting such local business without a license was upheld. The case does not tend to clarify the law on an already complicated point.[10]

Two cases involving the construction of federal acts regulating interstate commerce may be mentioned briefly. By the Transportation Act of 1920[11] Congress conferred upon the Interstate Commerce Commission exclusive jurisdiction of proceedings to establish a junction between two railroad lines engaged in interstate and intrastate commerce within a state when such a junction would affect or imperil interstate commerce. It is held in Alabama & Vicksburg R. Co. v. Jackson & Eastern Ry. Co.[12] that one of the two roads cannot by power of eminent domain compel the establishment of such a physical connection between the two lines, even when authorized by state law, without first securing the Commission's certificate of public necessity and convenience. The decision of the state court that interstate commerce will not be disadvantageously affected by the junction is of no avail, in view of the paramount and exclusive federal power to determine that point. The Elkins Act of 1903[13] penalizes every

[8] 233 U. S. 16. See also General Railway Signal Co. v. Virginia, 246 U. S. 500 and York Mfg. Co. v. Colley, 247 U. S. 21.

[9] 269 U. S. 148.

[10] See an excellent note on this case in 39 *Harvard Law Review*, 489.

[11] Act of Feb. 28, 1920, 41 Stat. at L. 456.

[12] 271 U. S. 244.

[13] Act of Feb. 19, 1903, 32 Stat. at L. 847.

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person who solicits or receives any concession, advantage, or favorable discrimination from any common carrier engaged in interstate commerce. This is held in United States v. Koenig Coal Co.[14] to support an indictment for securing coal to be used in automobile manufacture by the fraudulent representation that it was intended for hospital maintenance, such diversion being in violation of a priority order issued by the Interstate Commerce Commission under authority of the Transportation Act of 1920. The primary object of Congress in enacting the Elkins Act to prevent rebating and collusive discrimination upon the part of carriers and shippers does not bar its applicability to this new offence since, as Chief Justice Taft declares, "the purpose of Congress . . . . was to cut up by the roots every form of discrimination, favoritism, and inequality." The constitutional authority of the Commission to issue its priority order and of Congress to punish its infraction was sustained in the last term of court in the case of Avent v. United States.[15]

II. NATIONAL TAXATION

Is a consulting engineer who, under contract, renders professional services to states or subdivisions of states in connection with the installation of water supply or sewage disposal systems, exempt from the payment of a tax to the federal government upon the income derived from those services? This is the question raised in the case of Metcalf v. Mitchell,[16] and it gives the Court, speaking through Mr. Justice Stone in an extremely able opinion, an occasion to review the whole problem of the immunity of state officers and instrumentalities from federal taxation. The first problem raised is one of statutory construction. The War Revenue Act of 1917,[17] under which the tax was paid under protest, explicitly exempts from all levy the "compensation or fees" paid to "officers and employees under . . . . any state, territory, or the District of Columbia, or any local subdivision thereof." The Court found that

[14] 270 U. S. 512.

[15] 266 U. S. 127. See comment in the REVIEW, vol. 20, p. 81. Cases dealing with various aspects of the work of the Interstate Commerce Commission are Turner, D. & L. Lumber Co. v. C. M. & St. P. Ry. Co., 271 U. S. 259; Western Paper Makers' Chemical Co. v. United States, 271 U. S. 268; Patterson v. L. & N. R. Co. 269 U. S. 1. In Moore v. New York Cotton Exchange, 270 U. S. 593, it is held that the New York Cotton Exchange is not engaged in interstate commerce and therefore its refusal to allow the plaintiff to secure its quotations is not a violation of the Sherman Act.

[16] 269 U. S. 514.

[17] Act of Oct. 3, 1917, 40 Stat. at L. 300.

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the plaintiffs were not officers, since the contracts under which they rendered their services were "lacking in each instance in the essential elements of a public station, permanent in character, created by law, whose incidents and duties were prescribed by law." Nor were they "employees," since the judgment, discretion, and professional skill which they were obliged to use gave them a freedom of action "which excludes the idea of that control or right of control by the employer which characterizes the relation of employer and employee and differentiates the employee or servant from the independent contractor." There remains, however, the broader constitutional question whether the imposition of the federal tax upon the plaintiffs is in effect an interference by that government with an agency or instrumentality of a state so as to bring it within the doctrine of Collector v. Day.[18] The Court recognizes that "just what instrumentalities of either a state or federal government are exempt from taxation by the other cannot be stated in terms of universal application." Where the relationship between the agent and the government is intimate and official, any tax by the other government must be regarded as an interference; but where the agent or instrumentality does not occupy an official position he or it can claim immunity from taxation by the other government only by showing that such taxation actually does impede his functioning as a government agent. No such interference is found in the present case, for it cannot be shown that the payment of the federal income tax "impairs in any substantial manner the ability of plaintiffs in error to discharge their obligations to the state, or the ability of a state or its subdivisions to procure the services of private individuals to aid them in their undertakings." The decision is a welcome one as exhibiting a desirable strictness in confining immunity from taxation in these cases to instances where practical considerations of governmental independence require it.

When the Supreme Court in the case of Hill v. Wallace[19] held void those sections of the Future Trading Act of 1921[20] which imposed a prohibitive tax on grain bought or sold for future delivery, it intimated, speaking through Chief Justice Taft, that Section 3 was valid. This section provided for a tax of twenty cents per bushel on grain involved in transactions known as "privileges, bids, offers, puts and calls, indemnities, or ups and downs," and this, said the Chief Justice, "does not seem to be associated with Section 4 [held invalid by the court]" and

[18] 11 Wall. 113.
[19] 259 U. S. 44.
[20] Act of Aug. 24, 1921, 42 Stat. at L. 187.

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"such a tax would seem to be within the congressional power." This section (§3) is now attacked as unconstitutional in the case of Trusler v. Crooks[21] and is held by the Court to be invalid upon the authority of the Child Labor Tax Case[22] and Hill v. Wallace.[23] "This conclusion," says Mr. Justice McReynolds, "seems inevitable when consideration is given to the title of the act, the price usually paid for such options, the size of the prescribed tax (twenty cents per bushel), the practical inhibition of all transactions within the terms of Section 3, the consequent impossibility of raising any revenue thereby, and the intimate relation of that section to the unlawful scheme for regulation under guise of taxation. The imposition is a penalty, and in no proper sense a tax." Referring to the dictum above mentioned and upon which the government relied strongly, the learned justice observes: "Of course the quoted statement concerning §3 was intended to preclude any possible inference that we had passed upon a matter not directly in issue and to indicate that it remained open for discussion."

In Bowers v. Kerbaugh-Empire Co.[24] the Supreme Court throws further light upon the meaning of the term "income" as used in the Sixteenth Amendment. In this case the defendants in error had made large loans prior to the war payable in German marks. The sums of money borrowed were lost in the performance of construction contracts. After the close of the war the Alien Property Custodian collected from the defendants on behalf of the Deutsche Bank of Germany, which had loaned the money, the full amount of principal and interest. This payment was made, however, in marks then selling at two and one-half cents, a depreciation from which the defendants profited in their settlement to the amount of over six hundred thousand dollars. This sum was less, however, than the sums lost in the performance of the contracts. Was this diminution of loss resulting from the depreciation of German currency "income" within the meaning of the Sixteenth Amendment and liable to taxation? Adhering to its previous definition of income as "gain derived from capital, from labor, or from both combined, including profit gained through sale or conversion of capital,"[25] the Court holds that the diminished loss is not income. It is, after all, loss and not gain

[21] 269 U. S. 475.
[22] Bailey v. Drexel Furniture Co., 259 U. S. 20.
[23] Note 19 *supra*.
[24] 271 U. S. 170.
[25] Eisner v. Macomber, 252 U. S. 189, at page 207.

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even though the amount of the loss is less than it would have been had the depreciation not occurred.[26]

III. JUDICIAL POWER

A considerable number of cases involving federal judicial power and jurisdiction came before the Court. None of them, however, involve highly significant points, and they may be disposed of by very brief comment. It is held in Ex parte Gruber[27] that the clause of Article III, Section 2, of the Constitution giving the Supreme Court original jurisdiction "in all cases affecting ambassadors, other public ministers, and consuls" refers to representatives accredited to the United States by foreign countries, not to our own diplomatic and consular officers. The right to enjoy immediate access to the highest court of this country is a privilege "not of the official, but of the sovereign or government which he represents, accorded from high considerations of public policy . . . . considerations which plainly do not apply to the United States in its own territory." Consequently a petition to mandamus the United States consul-general at Montreal to visa the passport of a Russian immigrant was dismissed for want of jurisdiction.

The Supreme Court also declined to assume original jurisdiction in the case of the petition of the state of New Jersey for an injunction to restrain Attorney General Sargent and the members of the Federal Power Commission from proceeding with the enforcement, upon certain New Jersey waters, of the federal Water Power Act of 1920.[28] The bill filed failed to show that the "state is now engaged or about to engage in any work or operations which the act purports to prohibit or restrict" or that the provisions which are attacked are being applied or are about to be given any practical application. The suit therefore does not present any actual controversy, but attempts to secure from the Court an advance declaration regarding the constitutionality of the act. It is accordingly not a "case" over which the Court may take jurisdiction.

[26] The following cases involving the construction of the federal income tax acts were decided by the Court: Keith v. Johnson, 271 U. S. 1; United States v. Mitchell, 271 U. S. 9; New York Life Insurance Co. v. Edwards, 271 U. S. 109; Burk-Waggoner Oil Assoc. v. Hopkins, 269 U. S. 110; Edwards v. Chile Copper Co., 270 U. S. 452. In Provost v. United States, 269 U. S. 443, it is held that loans of corporate stock to enable the borrower to complete a short sale and the subsequent return of the stock are subject to the stamp tax imposed under the War Revenue Act of 1917 upon all sales and transfers of stock.

[27] 269 U. S. 302.

[28] New Jersey v. Sargent, 269 U. S. 328. The statute is that of June 10, 1920, 41 Stat. at L. 1063.

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In Alejandrino v. Quezon[29] the Court declined to take jurisdiction in an action for a mandamus to compel the restoration to office of a Philippine senator suspended for a year; this for the reason that the year had expired, the senator had resumed his duties, and the question had accordingly become moot.

In Miller's Indemnity Underwriters v. Braud[30] the Court holds that the exclusive admiralty jurisdiction of the federal courts does not bar the application of a state compensation law to the case of an employee who lost his life in removing timbers of an abandoned set of ways in the navigable waters of the United States. In this case the employer and employee had obviously contracted together with the state act in view; and the case is held to be governed by the rule previously laid down that "as to certain local matters the regulation of which would work no material prejudice to the general maritime law the rules of the latter may be modified or supplemented by state statute."[31] This is apparently not intended by the Court to constitute any real modification of the rule in Southern Pacific Co. v. Jensen,[32] or Knickerbocker Ice Co. v. Stewart.[33]

A point of statutory construction of considerable interest was involved in the three cases of Maryland v. Soper.[34] Certain federal prohibition agents were indicted in the state court for a murder they were alleged to have committed, for conspiring to obstruct justice by withholding facts regarding the crime and falsely alleging ignorance of it when examined before the coroner's jury, and for perjury committed on the same occasion. They petitioned for a removal of their cases from the state to the federal court for trial under the sections of the Judicial Code[35] and the National Prohibition Act[36] which permit such removals in cases in which federal officers are being prosecuted in state courts on account of acts done by them under color of their offices or of the revenue or prohibition laws. Judge Soper in the federal district court had ordered the cases removed, and the Supreme Court here grants the mandamus asked for by the state of Maryland compelling the return of the indictments to the state court for trial. It is held that the petition for removal must clearly show that the act charged was committed in or arose out of the

[29] 271 U. S. 528.
[30] 270 U. S. 59.
[31] Grant Smith-Porter Ship Co. v. Rohde, 257 U. S. 469.
[32] 244 U. S. 205.
[33] 253 U. S. 149.
[34] 270 U. S. 9; 270 U. S. 36; 270 U. S. 44.
[35] Section 33 of the Judicial Code as amended Aug. 23, 1916, 39 Stat. at L. 532.
[36] National Prohibition Act, Oct. 28, 1919, sec. 28.

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exercise of his duties by a federal officer. No such statement is here made with reference to the murder indictment. The officers have merely stated in a vague way that the homicide occurred at a time when they were engaged in their official duties. The conspiracy and perjury charges accuse the officers of acts which in the nature of the case they could not possibly justify on the ground of the performance of any federal official function and no ground exists for their removal from the state court. The Court shows no disposition to enlarge by construction the range of cases in which the "jurisdiction of the courts of a state to try offenses against its own laws and in violation of its peace and dignity" is "wrested from it by the order of an inferior federal court."[37]

IV. NATIONAL PROHIBITION

The ingenuity of the legal and constitutional attack on the Volstead Act and the Eighteenth Amendment seems only equalled by the consistency of its failure to impress the Court. In Druggan v. Anderson[38] the validity of the National Prohibition Act was challenged on an entirely new ground: namely, that the statute was passed by Congress before the Eighteenth Amendment upon which it rests went into effect. The Amendment was declared ratified on January 29, 1919, but by its terms the prohibitions contained in it did not begin to operate for a period of one year. Before the expiration of this one-year period Congress passed (on October 28, 1919) the Volstead Act which, however, did not become effective until after the prohibitions of the Eighteenth Amendment became operative. The Court declared that the Amendment became effective immediately upon its ratification, regardless of when the acts against which it was directed were actually prohibited. It was, therefore, in operation when the Volstead Act was passed. But even that, suggests Mr. Justice Holmes, may not have been important, for Congress could probably have passed a law before the ratification of the Amendment which was conditioned upon such ratification.

[37] Tutun v. United States, 270 U. S. 568, holds that the circuit court of appeals may hear appeals from the lower courts in naturalization cases, since naturalization is a judicial function so that proceedings relating to it give rise to a "case" within the meaning of the court of appeals act. Cases of minor importance dealing with matters affecting the jurisdiction of the lower courts are Central Union Telephone Co. v. Edwardsville, 269 U. S. 190; Live Oak Water Users' Assoc. v. R. R. Commission of California, 269 U. S. 354; Venner v. M. C. R. Co., 271 U. S. 127; Independent Wireless Teleg. Co. v. Radio Corporation of America, 269 U. S. 459; Great Northern Ry. Co. v. Galbreath Cattle Co., 271 U. S. 99.

[38] 269 U. S. 36.

[39] 271 U. S. 354.

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In United States v. Katz[39] the Court held that Section 10 of the National Prohibition Act which requires under penalty the keeping and filing of records of sales of intoxicating liquor was intended to apply to persons duly licensed under the law to sell and could not be made the basis of a criminal prosecution against a bootlegger. A literal interpretation of a statute which would lead to an absurd result should, said the Court, be avoided when possible.

V. THE FEDERAL BILL OF RIGHTS

A case which elicited considerable newspaper comment was the District of Columbia "color line case" of Corrigan v. Buckley.[40] It involved the question of the constitutionality of certain restrictive covenants running with the land for a period of twenty-one years by which the parties agreed that "no part of these properties should ever be used or occupied by, or sold, leased, or given to, any person of the negro race or blood" during that period. It was urged upon the Court that such discriminations against negroes practised by private individuals were in contravention of the Fifth, Thirteenth, and Fourteenth Amendments. The questions raised were more spectacular than difficult. The Court, as was expected, replied that the Fifth Amendment is a limitation only upon the power of the national government, that the Fourteenth Amendment is a restriction only on the powers of the states, and that the Thirteenth Amendment protects the individual only in the matter of enforced personal service to another person. The plea that the covenants were in violation of the legislation passed by Congress for the enforcement of the Thirteenth and Fourteenth Amendments was equally unavailing. Since the plaintiffs did not succeed in raising any substantial constitutional or statutory question, the Court dismissed the case for want of jurisdiction without passing upon the private law questions as to whether the covenants were void because they were contracts contrary to public policy or whether they imposed undue restraints upon the alienation of real property under the rule of Quia Emptores. On this last point see the important and interesting case of Porter v. Barrett, commented on in an earlier issue of the REVIEW.[41]

The doctrine laid down in Carroll v. United States[42] that an automobile or other vehicle may be searched upon probable cause by duly authorized officers without a search warrant does not support a search

[40] 271 U. S. 323.

[41] 206 N. W. 532. See the REVIEW, vol. 20, p. 595.

[42] 267 U. S. 132. See comment in the REVIEW, vol. 20, p. 87.

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without a warrant of a dwelling house or store. This is held in Agnello v. United States.[43] The Carroll case itself made plain the distinction in this respect between the search of vehicles and the search of buildings. The search of Agnello's house by government agents in the enforcement of the Harrison Anti-Narcotic Act[44] without a warrant is held by the Court to be an unreasonable search within the prohibition of the Fourth Amendment, and the introduction in court of the evidence obtained by such search amounts to a violation of the protection against self-incrimination guaranteed by the Fifth Amendment.

In Margolin v. United States[45] it is held that the due process clause of the Fifth Amendment is not violated by a provision of the War Risk Insurance Act of 1918[46] which limits to three dollars the compensation which any claim agent or attorney may receive where no legal proceeding has been instituted to enforce a claim under the statute. This follows the case of Calhoun v. Massie[47] upholding a similar limitation of attorneys' fees in the court of claims to twenty per cent of the amount of the judgment recovered.

In the case of Yu Cong Eng v. Trinidad[48] it is held that the Chinese Bookkeeping Act passed by the Philippine legislature in 1921 is a violation of the due process of law and equal protection of the law clauses of the Philippine bill of rights. The act made it a penal offense for any one engaged in business in the islands to keep books in any language other than English, Spanish, or some native dialect. While the law seems to have been passed for the worthy purpose of preventing the Phillippine government from being cheated out of taxes due it under cover of languages which its officials could not read, it was held that the enforcement of the statute would virtually drive out of business some 12,000 Chinese business men who carry on sixty per cent of the business of the islands. With respect to them it is a deprivation of property without due process of law and a denial of the equal protection of the law.

A peculiar scheme of graduated taxation of salmon canneries enacted by the territorial legislature of Alaska in 1923 is held in Pacific American Fisheries v. Alaska[49] not to exceed the delegated authority of the local

[43] 269 U. S. 20.
[44] Act of Dec. 17, 1914, 38 Stat. at L. 785 as later amended.
[45] 269 U. S. 93.
[46] Act of May 20, 1918, 40 Stat. at L. 555.
[47] 253 U. S. 170.
[48] 271 U. S. 500.
[49] 269 U. S. 269.

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legislature and not to amount to a denial of due process of law. The law imposes a tax of ten cents per case upon all salmon, five cents per case more on all in excess of 10,000 cases, ten cents per case more on all in excess of 25,000 cases, etc. The Court, speaking through Mr. Justice Holmes, declines to take the view that the regulatory consequences of the act rob it of its legitimate character as a taxing statute, and fails to find in the classification set up anything arbitrary or unreasonable.

In Henkels v. Sutherland[50] the Court holds that the United States government cannot, "without coming into conflict with the Constitution," refuse to pay over to an American citizen interest on money mistakenly seized during time of war in the belief that its owner is an enemy alien. The money in question here had been invested by the Alien Property Custodian in government securities. The money was duly returned to the American owner, but the interest on these securities during the period of the investment of the funds was withheld. This interest the government is now required to pay.[51]

VI. INTERNATIONAL LAW—WAR

The power of the United States government to confiscate enemy vessels found within its jurisdiction at the outbreak of war was questioned in Littlejohn & Company v. United States,[52] in which the plaintiffs sought to recover damages for injuries sustained by one of their vessels resulting from a collision due to the negligence of a vessel claimed by the United States to have been thus confiscated. There is no doubt that under a joint resolution[53] Congress at the outbreak of the war authorized the President to take possession and title of all enemy vessels within the jurisdiction of this country; nor is there any doubt that the President by executive order[54] authorized the taking by the United States Shipping Board of this particular vessel. It is urged, however, that the rules of international law as recognized by the United States, as well as Convention VI of the Second Hague Peace Conference of 1907, forbid such confiscation of enemy merchant vessels, and that the congressional and executive acts above referred to should be con-

[50] 271 U. S. 298.

[51] Two minor cases arising under the Fifth Amendment are: United States ex rel. Hughes v. Grant, 271 U. S. 142 (due process in criminal procedure), and Old Dominion Land Co. v. United States, 269 U. S. 55 (determination of just compensation in eminent domain proceedings).

[52] 270 U. S. 215.

[53] Joint Resolution of May 12, 1917, 40 Stat. at L. 75.

[54] Executive Order of June 30, 1917.

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strued in such a way as not to violate these requirements of international law. After pointing out that the United States never approved the Hague Convention mentioned, the Court holds that no restriction rests upon this government in the matter of such confiscation. "Congress had power to authorize the action irrespective of any general views theretofore advanced in behalf of this government. Certainly all courts within the United States must recognize the legality of the seizure." The plaintiff's suit was accordingly dismissed for want of jurisdiction since brought against a vessel owned and controlled by the United States government.

Sutherland v. Mayer[55] holds that a declaration of war automatically dissolves a partnership whose members as a result of it become enemies, that the loyal partner is entitled to an accounting as soon as communication between the enemy countries is resumed, and that the accounting in this case in German marks should be reckoned upon the basis of the value of the mark at the date when such communication between this country and Germany became effective under the War Trade Board regulation of July 14, 1919.

VII. STATUTORY CONSTRUCTION

Several cases of statutory construction of a miscellaneous nature may be mentioned very briefly. In White v. Mechanics Securities Corporation[56] it is held that the United States government has no right of priority over other creditors in funds formerly belonging to Germany and seized during the war. Under the Trading with the Enemy Act,[57] it stands in the same position as other claimants with respect to assets in the hands of the Alien Property Custodian. As Mr. Justice Holmes puts it: "Whether from magnanimity or forgetfulness, it has assumed the position of a trustee for the benefit of claimants and has renounced the power to assert a claim except on the same footing and in the same way as the others, if at all."

In American Steel Foundries v. Robertson[58] the Court was called upon to construe that section of the Trademark Act of 1905 forbidding the registration of a trademark which consists merely of the name of a corporation. Does this forbid the registration of a word which is less than the whole name of a corporation but contained in that name?

[55] 271 U. S. 272.
[56] 269 U. S. 283.
[57] Act of Oct. 6, 1917, 40 Stat. at L. 411.
[58] 269 U. S. 372.

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Concretely, can the Simplex Electric Heating Company object under the statute to the registration of the word "Simplex" as a trademark upon goods other than those which they manufacture? Suggesting that the law of trademarks is part of the broader law of unfair competition, the Court declares that the answer to the foregoing question hinges upon whether "it appears that such partial appropriation [of the corporate name] is of such a character and extent that, under the facts of the particular case, it is calculated to deceive or confuse the public to the injury of the corporation to which the name belongs." The Court finds that no such result will follow in this case, especially since the word "Simplex" forms the whole or part of about sixty trademark registrations by different parties and on different kinds of goods.

In St. Louis-San Francisco Ry. Co. v. Mills[59] the Court holds that an interstate railroad is not guilty of negligence within the meaning of the Federal Employers Liability Act[60] for its failure to provide more than one guard as a protection for an employee during a strike, the employee having been shot by strikers. There was no duty resting upon the employer to provide any protection at all, and its voluntary assumption of that duty does not under the facts support the inference that it undertook to provide more adequate protection.

B. QUESTIONS OF STATE POWER

I. THE FOURTEENTH AMENDMENT

1. The Police Power

The perennial conflict over the proper application of the test of due process of law to state police legislation arises in the case of Weaver v. Palmer Brothers,[61] in which by a six to three decision the Supreme Court invalidates a Pennsylvania statute forbidding the use of "shoddy" in the manufacture of mattresses, comfortables, and other bedding. The majority opinion is written by Mr. Justice Butler; Justices Brandeis and Stone concur in the dissenting opinion by Mr. Justice Holmes. The issues involved and the judicial viewpoints reflected are practically identical with those in the case of Burns Baking Co. v. Bryan.[62] There are represented on the present Court three discernible points of view with respect to this type of case. The Holmes-Brandeis philosophy has

[59] 271 U. S. 344.
[60] Act of April 22, 1908, 35 Stat. at L. 65.
[61] 270 U. S. 402.
[62] 264 U. S. 504.

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been long and consistently adhered to by those justices. It has never been more lucidly stated than in the dissenting opinion of Mr. Justice Holmes in the case of Schlesinger v. Wisconsin, quoted *infra*, at page 87. It requires the judicial non-interference with state police legislation if the question of the arbitrary or reasonable quality of the law may be deemed by reasonable people to be fairly debatable. At the other extreme is the attitude of Justices Butler and Sutherland, well reflected in the majority opinion in the present case, as well as in the Minimum Wage Case[63] and Burns Baking Co. v. Bryan.[64] These justices seem to address themselves, with evident relish, not to the question whether the validity of the law is reasonably debatable, but to the question whether they themselves are convinced that it is a reasonable enactment. This involves a direct judicial appraisal of the facts tending to justify or discredit the law, and a direct judicial conclusion based upon those facts. Then there is, it is believed, a "middle-of-the-road" position occupied by certain justices on the Court who have been perhaps less articulate than those mentioned with respect to this type of constitutional question. This partakes of certain elements of both of the other positions already mentioned, and differs from each only in degree. It is a position less ruthless than the Butler-Sutherland theory that these cases should be decided upon a direct and immediate judicial estimate of the reasonableness of the law, without attaching any discernible importance to the original legislative judgment that the law is reasonable. Nor does it wholly embrace the latitudinarian doctrine of Justices Holmes and Brandeis. It is a judicial attitude which enables a justice to sustain a statute which he himself may deem unreasonable if the difference of opinion regarding its reasonableness is sufficiently sharp and if there is a substantial and respectable body of evidence and belief mustered to its support. It limits more than does the Holmes-Brandeis theory the amount of judicial respect accorded to the opinion of the legislature that it has acted within its constitutional authority, but it does not ignore that opinion. It is a philosophy with respect to due process in police power cases which makes it possible to reconcile Chief Justice Taft's dissenting opinion in the Minimum Wage Case with his failure to dissent in the Burns Baking Co. Case or the present case of Weaver v. Palmer Brothers. If the liberal philosophy of Justices Holmes and Brandeis cannot come to dominate the Court's thinking upon these questions, and there seems no present ground for optimism in this regard,

[63] Adkins v. Children's Hospital, 261 U. S. 525.

[64] *Supra*, note 62.

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even in spite of the support apparently received from Mr. Justice Stone, then at least we are justified in hoping that the Court may come to discard the Butler-Sutherland doctrine in favor of this less drastic "middle-of-the-road" position. While it may seem to many persons that one is merely splitting hairs in insisting that there is an important difference between the judicial act of deciding whether a police regulation is reasonable or not and the judicial act of deciding whether reasonable people acting reasonably might regard it as reasonable, it is the writer's belief that this difference is vital in differentiating between sound moderation in the exercise of judicial review and mere judicial ruthlessness.

A case of perhaps more intrinsic importance than the preceding one was that of Connally v. General Construction Company[65] in which the Court, speaking through Mr. Justice Sutherland, held void for want of certainty under the due process clause an Oklahoma statute making it a penal offense for contractors on public works to pay their men "less than the current rate of per diem wages in the locality where the work is performed." The Court recognizes at the outset the difficulty of setting up an accurate and precise test by which to determine whether a penal statute is too vague and uncertain in its prohibitions to render it void for want of due process. It does, however, formulate the following general principle governing such cases: "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well established requirement, consonant alike with the ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." Applying this to the statute under review the Court finds that it contains two expressions which are fatally uncertain in meaning. The first of these is "the current rate of wages," with respect to which the Court declares that it is impossible to ascertain by any reasonable test that the legislature meant one thing rather than another. Does it mean highest rate, lowest rate, or average rate? Nobody knows. Nor can the term "locality" be defined with any satisfactory precision. Who is to say, or how is any contractor to know, how large a "locality" is? While the decision seems plausible, it has been pointedly suggested[66]

[65] 269 U. S. 385.

[66] See note in 39 *Harvard Law Review* 871.

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that legislation of this type has been in force in various states ever since the Kansas eight-hour law for public work (which contained a wage clause identical with the Oklahoma provision here under review, but which the Court did not consider in its opinion) was held constitutional by the Supreme Court in 1903,[67] that the clauses in these laws have never given rise to serious complaint, and that there seems to be no way in which the legislative intent with respect to the subject-matter may be couched in language any more definite and specific. Justices Holmes and Brandeis concurred in the result on the ground that a violation of the statute had not been made out.

2. State Taxation

In Schlesinger v. Wisconsin[68] the Supreme Court held void as a denial of the equal protection of the law the Wisconsin statute imposing a graduated inheritance tax upon gifts made within six years of death as conclusively presumed to have been made in contemplation of death. The opinion of the majority is written by Mr. Justice McReynolds and reflects much the same philosophy as the majority opinion in Weaver v. Palmer Brothers discussed above.[69] It is agreed that gifts made in contemplation of death might be subjected to such a tax. It is further agreed that such a tax could not be levied upon gifts made under normal circumstances between living persons. Such a tax would involve a wholly arbitrary classification. Can the state, in view of the strong probability that gifts made within a short time before death are made in contemplation of death, create a conclusive presumption that they are so made and tax them as such? The Court's answer is that "a forbidden tax cannot be enforced in order to facilitate the collection of one properly laid." The statute involves arbitrary discrimination because, as a result of the irrebuttable presumption set up, gifts made *inter vivos* and not in contemplation of death are treated as though they were not thus made. Justices Holmes, Brandeis, and Stone again dissent from the decision of the majority. Portions of Mr. Justice Holmes' opinion may well be set forth here, not only because they indicate the specific nature of the attack on the majority opinion, but also because they state so admirably the liberal philosophy which these justices have so consistently adhered to in cases of this type. Said Mr. Justice Holmes: "If the Fourteenth Amendment were now before us for the first time I should think that it

[67] Atkin v. Kansas, 191 U. S. 207.
[68] 270 U. S. 230.
[69] *Supra*, p. 84.

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ought to be construed more narrowly than it has been construed in the past. But, even now, it seems to me not too late to urge that in dealing with state legislation upon matters of substantive law we should avoid with great caution attempts to substitute our judgment for that of the body whose business it is in the first place, with regard to questions of domestic policy that are fairly open to debate. The present seems to me one of those questions . . . . If the time were six months instead of six years I hardly think that the power of the state to pass the law would be denied, as the difficulty of proof would warrant making the presumption absolute; and while I should not dream of asking where the line can be drawn, since the great body of the law consists in drawing such lines, yet when you realize that you are dealing with a matter of degree you must realize that reasonable men may differ widely as to the place where the line should fall. I think that our discussion should end if we admit, what I certainly believe, that reasonable men might regard six years as not too remote. Of course many gifts will be hit by the tax that were made with no contemplation of death. But the law allows a penumbra to be embraced that goes beyond the outline of its object in order that that object may be secured . . . . I am not prepared to say that the legislature of Wisconsin, which is better able to judge than I am, might not believe, as the supreme court of the state confidently affirms, that by far the larger proportion of the gifts coming under the statute actually were made in contemplation of death. I am not prepared to say that if the legislature held that belief, it might not extend the tax to gifts made within six years of death in order to make sure that its policy of taxation should not be escaped. I think that with the states as with Congress, when the means are not prohibited and are calculated to effect the object, we ought not to inquire into the degree of necessity for resorting to them."

In Lake Superior Consolidated Iron Mines v. Lord[70] the Court upheld the validity of the Minnesota tax of six per cent upon all royalties received for permission "to explore, mine, take out, and remove ore from land in this state." The tax is deemed by the Court to be a tax on interests in mineral lands. Thus the owner's residence and the place for payment of the royalty do not affect the constitutional power to collect the tax. There is no denial of equal protection of the law in treating ore lands as a distinct class of property for purposes of taxation. This is particularly true because lands "chiefly valuable for ore are depreciated

[70] 271 U. S. 577

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by its extraction and will probably yield less and less under an ad valorem tax as the mining continues." This sets them apart from lands used for purposes which do not deplete their value.

Under a North Carolina statute that state imposed an inheritance tax upon the transfer under a will made by a resident of Rhode Island of certain shares of stock in a New Jersey corporation doing business and having two-thirds of its property in North Carolina. The testator had never kept the stock certificates in North Carolina. This was held by the Court in Rhode Island Hospital Trust Co. v. Doughton[71] to be a denial of due process of law, since the tax is levied by the state upon property not within its jurisdiction. The tax here is not upon the property but upon the right of succession to the property. "A state has no right to tax the devolution of property of a non-resident unless it has jurisdiction of the property devolved or transferred." The Court rejects the state's theory that the owner of the shares of stock in a corporation is the owner of the property of the company, a fiction which would have supported the state's right to tax the transfer of the shares wherever they might be located.

It is held in General American Tank Corporation v. Day[72] that the imposition of a state tax upon non-residents doing an interstate business within the state, in lieu of local taxes assessed upon residents, is not a denial of the equal protection of the law, even though the rate on non-residents is slightly greater than on residents. The law disclosed no purpose to discriminate against non-residents and mathematical equality in the two sets of rates is not required. The non-resident has the option of becoming domiciled and paying the local tax, but there is no compulsion upon him to do this, which would amount to a violation of the commerce clause.[73]

3. The Regulation of Public Utilities

It was held in Michigan Public Utilities Commission v. Duke[74] that to compel one engaged in a purely private business to assume the status and liabilities of a common carrier against his will is to deprive him of his property without due process of law. In the case of Frost v. Railroad

[71] 270 U. S. 69.

[72] 270 U. S. 367.

[73] Other cases involving due process in state taxation are: Browning v. Hooper, 269 U. S. 396 (special assessments), and Roberts & S. Co. v. Emmerson, 271 U. S. 50 (taxation of corporations).

[74] 266 U. S. 570. See comment in the REVIEW, vol. 20, p. 104.

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Commission[75] is involved the validity of a California statute which attempts to accomplish this result by indirection. The act imposed upon any one using the public highways in the capacity of a carrier the obligation of securing from the railroad commission a certificate of public convenience and necessity, the issuance of which subjects them to the type of detailed regulation commonly imposed upon common carriers. The plaintiffs were engaged under a single private contract in transporting for compensation citrus fruit over the public highways between fixed points. They did not hold themselves out to be common carriers, nor do they desire to become such. Yet they are compelled by the statute to assume such status in order to secure the privilege of using the highways in their business. There can be no doubt as to the power of the state to withhold at its descretion the privilege of using the public highways for hire. The question then is: May the state as the price of a privilege which it may withhold altogether demand the sacrifice on the part of the plaintiff of his established constitutional rights under the Fourteenth Amendment? The Court holds that it may not do so and that the statute as applied to the plaintiff is a denial of due process of law. The opinion of Mr. Justice Sutherland presents a careful and valuable analysis of the principle that "a state may not impose an unconstitutional requirement as the condition for the granting of a privilege," and the previous authorities bearing upon this point are reviewed. Justices Holmes and Brandeis dissented in an opinion by the former, while Mr. Justice McReynolds wrote a separate dissenting opinion.

An interesting question regarding the proper computation of a reasonable rate for public utility service came before the Court in Board of Public Utility Commissioners v. New York Telephone Company.[76] It was admitted that the telephone rates which were being attacked by the company were not sufficient to yield a fair return on the value of the property invested after paying the necessary operating expenses and taxes, and setting aside a proper allowance for depreciation. It was also admitted that in the past the sums set aside by the company as a reserve for depreciation were considerably greater than necessary. The questioned rate was sustained by the Commission upon a computation which reduced the current depreciation charges by applying to that purpose the reserves accumulated in the past. This the Court holds cannot be done consistently with due process of law, for the rate still remains con-

[75] 271 U. S. 583.

[76] 271 U. S. 23.

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fiscatory. The just return guaranteed by the Fourteenth Amendment to a public utility is a "reasonable return on the value of the property used at the time that it is being used for public service." "Profits of the past cannot be used to support confiscatory rates for the future."

In Smith v. Illinois Bell Telephone Company[77] the Court held that a public utility is entitled to equitable relief where a public service commission by long continued and unreasonable delay in acting upon an application for increased rates continues a confiscatory rate in force. The company had tried in vain for more than two years to get the commission to act. It need not wait longer before applying for injunctive relief, nor may the commission question the proceeding on the ground that the company has not exhausted its legislative remedies.

4. Procedure—Criminal and Civil

It is held in Ashe v. United States ex rel. Valotta[78] that no denial of due process of law is involved in trying two indictments against the same person at the same time. Nor is there want of due process or denial of equal protection of the law in the procedure before a state board of health for the revocation of a doctor's license on the ground of procuring an abortion because the statute requires the presentation of evidence before the board by depositions rather than by the personal appearance of witnesses. This is held in Missouri ex. rel. Hurwitz v. North.[79] In Booth Fisheries Company v. Industrial Commission[80] it is held that when an employer elects to come under the provisions of a state workmen's compensation law which is optional in its provisions he is not deprived of his property without due process of law by a provision of the act which makes the findings of the industrial commission conclusive if supported by any evidence regardless of its preponderance. Furthermore, having thus elected to accept the benefits of the law, he is estopped from attempting to escape its burdens by asserting its unconstitutionality.

II. STATE POLICE POWER AND INTERSTATE COMMERCE

In 1921 the director of agriculture of the state of Washington, acting under authority of state law, promulgated a quarantine order to prevent bringing into the state, from specified areas outside the state, any

[77] 270 U. S. 587.
[78] 270 U. S. 424.
[79] 271 U. S. 40
[80] 271 U. S. 208.

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alfalfa hay or meal save under certain strict regulations. This was to prevent the spread into the state of the alfalfa weevil. The constitutionality of this order came before the Court in the case of Oregon-Washington R. & Navigation Co. v. Washington,[81] and it was held to be void as an invasion by the state of a field of interstate commerce regulation already occupied by positive congressional enactment. By an act passed in 1912[82] and later amended, Congress authorized the Secretary of Agriculture to establish such measures of quarantine as may be necessary to prevent the transportation in foreign or interstate commerce of anything which might spread disease to or injure trees, plants, or crops. This act is held by the Court to evidence the intention of Congress to occupy fully and exclusively the entire field of plant quarantine. State action affecting interstate commerce in respect to the same subject matter is thereby excluded. It was urged upon the Court that the Secretary of Agriculture had done nothing to relieve the exigency, and that until he acted the state should be allowed to enforce its own regulations. To this the Court replied: "The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine, in his judgment, is necessary. When he does not act, it must be presumed that it is not necessary." Justices McReynolds and Sutherland dissented on the ground that Congress should not be presumed to have intended to "deprive the states of power to protect themselves against threatened disaster like the one disclosed by this record." They emphasize that "it is a serious thing to paralyze the efforts of a state to protect her people against impending calamity, and leave them to the slow charity of a far-off and perhaps supine federal bureau. No such purpose should be attributed to Congress unless indicated beyond reasonable doubt."

In New York Central R. Co. v. New York and Pennsylvania[83] an order of the public service commission of Pennsylvania, requiring the repayment by way of reparation of alleged excess charges made by the plaintiff in error for the transportation of coal in commerce within the state during the six months following the federal control of railroads, was held void as being in direct violation of the provision of the Transportation Act of 1920[84] forbidding the reduction of rates without the permission of the Interstate Commerce Commission. It is held in

[81] 270 U. S. 87.
[82] Act. of Aug. 20, 1912, 37 Stat. at L. 315, and later amended.
[83] 271 U. S. 124.
[84] Act of Feb. 28, 1920, 41 Stat. at L. 456.

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Peoples Natural Gas Co. v. Public Service Commission[85] that an order of the commission requiring the company to continue to supply gas to another company for sale to consumers in a city within the state is not a burden on interstate commerce. Part of the company's supply of gas came from outside the state and part from inside. While the transportation of the gas through pipes from across the state line is clearly interstate commerce, the Court found that there was no interference with that commerce inasmuch as the local supply was more than adequate to meet the requirements of the commission's order.

III. STATE TAXATION AND FEDERAL SUPREMACY

A somewhat questionable application of the doctrine of the immunity of federal agents and instrumentalities is found in the case of Jaybird Mining Co. v. Weir.[86] Certain lands had been allotted to the Quapaw Indians by the federal government with restrictions against their alienation running, under two statutes, for fifty years. The plaintiffs hold a mining lease on the land under the terms of which they pay a certain royalty upon the ore mined. The Indians were adjudged by the Secretary of the Interior to be incapable of managing their property, and control of it was assumed by him in their behalf. The royalties, as a result, were paid by the plaintiffs to the Secretary. The Court holds that a tax imposed by the state on the ore mined by the plaintiff is a tax upon an instrumentality of the federal government, since the plaintiff is serving the government in this capacity in promoting and protecting the interests of the Indians who own the land. Mr. Justice Brandeis and Mr. Justice McReynolds dissented. The dissent of the former presents a careful argument to show that the tax in question does not burden the lessee in such a way as to impair his capacity effectively to serve the government, that it is merely a tax upon his property, not on the property of the government, and that it does not diminish the amount of the royalties paid to the owners. A much clearer case is that of Childers v. Beaver.[87] Here was involved the allottment of lands to the same Indians as in the last case, with the same stipulation of inalienability, for a period of twenty-five years, and the further provision that if the allottee dies intestate the heirship shall be determined by the law of the state in which the land is located. The Court held that during that twenty-five year period the state could not impose an inheritance

[85] 270 U. S. 550.
[86] 271 U. S. 609.
[87] 270 U. S. 555.

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tax upon the succession to the lands, since this would permit state interference with the means and policies by which the government is discharging its duty to a dependent people.

IV. EX POST FACTO CLAUSE—CONTRACT CLAUSE

In Beazell v. Ohio[88] it is held that a statute, retroactive in application and permitting the trial judge discretion in allowing separate trials to persons jointly indicted for felony is not ex post facto, though at the time the crime was committed the law made separate trials mandatory. The Court said: "It is now well settled that statutory changes in the mode of trial or the rules of evidence, which do not deprive the accused of a defense and which operate only in a limited and unsubstantial manner to his disadvantage, are not prohibited." The change here provided for does not seriously injure the accused.

[88] 269 U. S. 167.

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LEGISLATIVE NOTES AND REVIEWS

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Can Legislatures Learn from City Councils? So prevalent has been the tendency to find fault with American state legislatures that almost every phase of their activity has been subject to unfavorable criticism. Their power to enact laws has been progressively restricted by constitutional prohibitions and regulations, applying both to their substantive powers and to their procedure. The latter phase has undoubtedly received the bulk of the criticism. Methods of drafting and introducing measures, the bicameral system, the committee system, provision for reading and printing bills, the subject-matter to be included in any one bill, roll calls, quorums, vetoes, referenda—all have been examined and provisions relating thereto, usually restrictive in character, have been embodied in state constitutions and in the rules of those legislatures which have become sensitive to the attacks on their methods.

The criticisms center on the methods of handling the appalling quantities of grist poured into the legislative mills. Attempted improvements have taken various forms. The length of sessions has been limited in over thirty states. California and West Virginia have tried the split session, requiring most measures to be introduced in the first part. Other states fix a dead-line for the introduction of bills. Massachusetts requires practically all measures to be introduced during the first two weeks of the session, and reports thereon to be made by the committees at an early date; and these rules, supported by a healthy rivalry between committees in keeping their slates clean, and by the fact that Massachusetts legislators do not seem in excessive haste to bring sessions to a close, give that state an enviable record in legislative procedure.[1]

Other states have been less successful. Fixing the length of session at sixty or ninety days apparently does little to reduce the quantity of legislation, and it perhaps adds to the confusion in the rush to get measures through in the closing days. But in states without constitutional limitation of the duration of the session a closing rush is

[1] *Annals of the American Academy of Political and Social Science*, vol. 77 (May, 1918), Suppl., pp. 99–100.

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likewise precipitated by the anxiety of the members to finish their task,[2] with results similar to the conditions in the states limiting the sessions.

Moreover, anxiety to finish does not manifest itself in tangible results until the session is far advanced. The Ohio General Assembly, which may be taken as typical of the legislatures with unlimited sessions, convened on January 5, 1925, and sent its first bill to the governor on February 4. Not counting appropriation acts and joint resolutions, only seven more bills were passed in the remainder of that month.[3] During the first nineteen days of March a total of forty-one bills were passed—nine on the fifth, seven on the third, six each on the twelfth and nineteenth, and the balance on other days.

On the legislative day March 24, the number of bills passed jumped to twelve; the next day it mounted to sixteen; the next day it more than doubled, totalling thirty-seven; and on the twenty-seventh it again doubled, reaching seventy-nine. Fortunately, the legislature did not meet the next day and attempt to keep up the doubling process. Instead, it rested until April 16, when six measures were passed. Twenty-three more were passed on the seventeenth,[4] in addition to thirty-four which were repassed over the governor's objections. Twenty of these thirty-four were among the seventy-nine which had been passed on March 27. The General Assembly then took a "thirty-minute" recess, which lasted until January 15, 1926, when the legislators reassembled for a one-day session, after which another recess was taken.[5]

In extenuation of the typical slowness in starting the enactment of laws, it should be noted that there are always some new members (one-third to one-half regularly in the lower house) who need time to accustom themselves to the situation. Those with experience hesitate to proceed with their program until the newcomers are "lined up." Moreover, in

[2] "No means have been developed to remedy a condition which is partly due to a lack of effective organization throughout the session and is partly psychological." *Ibid.*, 98.

[3] One of these was vetoed and repassed over the veto, April 17. Session Laws, Ohio, 1925, p. 445.

[4] Two of these were vetoed—one to require Bible reading in the public schools, the other to empower the public utilities commission to appoint and control its employees.

[5] The legislature recesses instead of adjourning in order to keep the Democratic governor from making appointments to offices the terms of whose Republican incumbents have long since expired, but who nevertheless hold until their successors have been appointed and qualified.

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many cases their program is of such a nature that it has better chance of passing in the confusion of the closing days. Of course, committees are presumed to be working on the bills referred to them during the first two months or so. But it seems hardly necessary that committees deliberate so long, or that the houses postpone action regarding bills of one or two brief sections, introduced early in the session, numbers of which may be found among those carried through in the final stampede.

In view of the generally unsuccessful attempts to eliminate the end-of-the-session rush, and other unsatisfactory phases of legislative procedure, the question may be raised whether state legislatures can learn anything from the procedure in the councils of the larger cities of the United States. Professor John M. Mathews has pointed out that state legislative organization might be improved by applying the principles of a unicameral body, proportional representation, and a controlled executive, with all of which there has been much experience in city governments.[6]

With regard to procedure, rules of councils and legislatures are in many respects similar. In the councils of at least five[7] of the twelve largest cities, proposed ordinances have to be printed and on the desks of members before final action is taken. Regular procedure in these and other councils forbids final action on a proposed ordinance in the session in which it is introduced. Unanimous consent, or an unusual majority, may override this rule, as is "frequently done" in the Chicago city council, although not all types of ordinances can be rushed through[8] in this way. But here as elsewhere most measures have been considered by standing committees, just as in state legislatures. Moreover, one to three members can force a roll call in any one of these twelve councils, a rule recently made use of by the independents in the Cleveland city council to conduct a filibuster.[9]

Consequently, except for the absence of a second house—and in New York City the board of estimate and apportionment may be taken as supplying this deficiency,[10] if it be such — city councils are as completely

[6] *American State Government*, pp. 204–7.

[7] Chicago, Philadelphia, Cleveland, Baltimore, and Pittsburgh.

[8] See Illinois statute of June 14, 1897, requiring publication of all ordinances providing for public improvements costing over $100,000 a week before any action is taken in the council. Also, the San Francisco charter, sec. 13, art. II, ch. 1.

[9] *Cleveland Plain Dealer*, March 16, 1926, p. 1. The filibuster was led by Councilman Witt, who demanded that the council establish a calendar of pending legislation.

[10] Especially since the passage of the city home rule law, ch. 363 of the Laws of 1924, State of New York.

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guarded against hasty action as are state legislatures. One might be satisfied with fewer safeguards in a body with subordinate legislative powers. Nevertheless, persons framing city charters and council rules have seen fit to embody these procedural restrictions on the municipal policy-forming organ.

If the foregoing rules are similar in both legislature and council, the question may be raised whether this examination of council procedure aids in solving the legislature's difficulties. The answer is that the comparison is not yet complete. It has seemed desirable, first, to determine the extent of similarity. Then, if objectionable practices are found in one and not in the other, presumably they are caused by some procedural feature in which the two types differ.

As already noted, legislatures are severely criticized for first-of-session inactivity and last-of-session rush. City councils often dispose in one session of even more measures than do state legislatures in their closing days. The Chicago city council, by the "omnibus" process, is reported to have passed fifty-four ordinances recommended by one committee at one session.[11] Although Chicago's council may be burdened with more than the usual amount of detail, others are by no means free leisurely to survey the legislative needs of their respective cities. The Cleveland council "generally passes from 100 to 150 ordinances and resolutions in one meeting.[12]

Such procedure in city councils may not be regarded as objectionable. A prominent member of the small group of independents in the Cleveland council could not "say that any ordinances have been too hastily passed during" his experience in the council. "Unless a four-fifths vote can be secured," he explains, "an ordinance must be read on three separate days. Unless passed under suspension of the rules, an ordinance regularly goes to committee and will be subject to discussion in committee hearings as well as on the floor of the council."[13]

Most of the ordinances deal with matters of detail in which there is little or no general interest. Unless the committee system is challenged, there is little reason for demanding that the whole council deliberate on each matter submitted for its approval. So long as the rules may be invoked by a small minority to slow down the process, there is a real advantage in getting routine matters out of the way so that time can be given for the discussion of important measures.

[11] *National Municipal Review*, Sept., 1925, p. 552.
[12] *Cleveland Plain Dealer*, March 23, 1926, p. 1.
[13] Letter of Councilman Hatton to the writer.

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Speed in enacting measures—the bane of the closing days of legislative sessions—seems to be not only a regular practice but an admirable practice in city councils. How do they do it? The explanation must lie in their one outstanding procedural difference from state legislatures. The latter meet biennially (there are a few exceptions) and try to care for all of the needs that have accumulated during the biennium, and in addition for all the needs which active imaginations conceive may arise in the future and which cannot, according to these imaginings, possibly be deferred two long years. Consequently, there is pressure from many different sources for favorable action before adjournment.

The city councils, on the other hand, meet regularly at least once a week, except perhaps during the summer months.[14] Time between sessions is insufficient for material to accumulate. The next meeting is so near that there is no urgent need to jam everything through at one sitting. Moreover, one to five members, depending on the size of the council, can in most cases call a special session. Consequently there is little point in prolonging a meeting unduly. Because unreasonable quantities of important legislation do not have to be forced through at a particular session, minorities can be given a hearing whenever they object to measures under consideration. In most of the large city councils, one member can force a roll call.[15]

Is it practicable for legislatures to emulate city councils in this respect and provide for the assembling of legislators monthly during their term? Distance has become a negligible factor since the time when annual or biennial sessions were first established. Then, continuous residence in the capital was necessary so long as the session lasted. Now, no representative from the remotest district of any state, except Texas and some other western states, would have to spend twenty-four hours going to or from the capital.

Under the suggested arrangement, new types of men would be available for legislative service. Persons whose business or profession would not permit three or four months of enforced absence from their homes could, with little inconvenience, spend a day or two each month

[14] Section 216 of the Baltimore charter requires the city council to continue in session "for one hundred and twenty days and no longer in each year." But its sessions may "be held continuously or otherwise" as it may by ordinance or resolution arrange.

[15] Chicago, Detroit, Boston, Baltimore, Pittsburgh, Los Angeles, and perhaps others among the twelve. New York City requires two.

[16] Ohio General Code, sec. 50. See also W. F. Dodd, *State Government*, 186–7.

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at the seat of government. Committee service might, occasionally, require somewhat more time.

This proposal is not so extreme as it may seem at first glance. The split session is a beginning. At least two states, Illinois and Ohio, have gone farther. They authorize the payment of weekly mileage "at the legal rate of transportation each way."[16] Since this would amount to payment for about sixteen to twenty trips, the element of travel expense to the state would be almost the same if legislators came once a month during a biennium instead of weekly for four or five months. If the customary large number of legislative employees were retained permanently this might materially increase the expense; but the very fact of expense should arouse the public to the fact that there are "as a rule, many more legislative employees than are necessary for the work to be performed."[17] Better work could be done by a smaller, permanent staff.

Ohio has gone still farther in the direction proposed. The general assemblies of 1923 and 1925 empowered joint committees to call the members back at any time after they should have recessed and returned to their homes.[18] The committee of the 1925 assembly has exercised this power once.[19] This experience serves to show the facility with which the law-making process can be resumed. In the one-day session the business for which the members reassembled was transacted; log-rolling had no time to make headway before the legislature again recessed.

To abolish end-of-session rushes, as well as to give the legislature opportunity for more continuous supervision over state administration, why not try the city council method of short but frequent sessions?[20]

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[17] Mathews, as cited, p. 187.

[18] Sen. J. Res. 30, Session Laws, Ohio, 1923, p. 651; H. J. Res. 44, *ibid.*, 1925, p. 544. The latter provides "that when the Eighty-sixth General Assembly adjourns on April seventeenth, nineteen hundred and twenty-five, it will be until December thirty-first, nineteen hundred and twenty-six, at one-thirty p. m., unless sooner called together by a committee composed of the lieutenant-governor and president pro tem. of the Senate, and the speaker and speaker pro tem. of the House, ... " April 17, 1925.

[19] Above, p. 96.

[20] An Associated Press dispatch of November 25, 1926, reports that Governor-elect W. J. Bulow of South Dakota is advocating a small unicameral legislature, to meet four times a year. Bills would be introduced and given their first and second readings at one session; they would be given their last reading and acted upon three months later.

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FOREIGN GOVERNMENTS AND POLITICS

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The Canadian Election of 1926. For the second time within twelve months, the continuing parliamentary tangle in Canada gave rise, on September 14, 1926, to a general election which not only was one of the most bitterly contested in years, but was focused, on the surface at least, upon a constitutional crisis without precedent in the history of the dominion.[1] The outcome, however, proved to be considerably more decisive than the conflict of a year before, the Liberal party winning 119 seats—only four short of a clear majority in the House of Commons—which, with its Progressive and farmer allies, should mean that it will be able to restore relatively stable party government to Canada for the next few years.

The setting that led to the sudden dissolution of the fifteenth Canadian parliament on July 2 was indeed dramatic. Mr. Mackenzie King, the Liberal premier, had somehow managed for nearly six months to weather the storms that beset any minority government. With fairly consistent support from twenty or more Progressives who held the balance of power in the House, and with none too effective opposition from the dispirited Conservatives, his Government had pushed along a budget which, by and large, was a popular measure both in and out of the halls of Parliament; creditable old age pensions and rural credits bills, moreover, had passed the House by substantial majorities, though the former later fell a victim to the Senate's axe. But by June the Liberal cabinet not only was facing the concentrated attack of Conservatives and Progressives, but was feeling unpleasant criticism from some of the rank and file among its own supporters. This new danger was an onslaught upon the Government at the weakest point in its armor. Charges of grave irregularities in the administration of the customs along the American border had forced the appointment four months earlier of a special investigating committee which was now ready to report its findings. The gist of its unanimous report was (1) that the customs department had, since 1921, steadily declined in administrative

[1] For brief accounts of the 1925 election see the writer's article in the REVIEW for Feb., 1926, and Hugh L. Keenleyside, "The Canadian Election of 1925," in *Current History*, Jan., 1926.

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efficiency under the headship of Senator Jacques Bureau[2]; (2) that the smuggling industry had developed ominous proportions, especially along the Quebec boundary; and (3) that this deplorable situation had been assisted by the tacit connivance, if not the direct coöperation, of numerous officials within the department.

At once the Conservatives sprang to the attack invited by such sensational revelations. When it was moved by the Government that the report be adopted without comment by the House, the Opposition countered with an amendment which charged the Government with responsibility for the scandals. Mr. Boivin, the minister of customs, became the target of a proposed vote of censure. Before packed galleries, he valiantly defended himself and promised that the inquiry should go on in order that the wrongdoers, many of whom he contended were Conservatives appointed under civil service rules, might be detected and removed. But by this time numerous Progressives had been won over to the Conservatives' position, largely, it is said, by the effect upon them of a secret report which had been suppressed by the investigating committee as too personal, but which, privately circulated later, told of gay parties held on government cutters and attended by at least two members of the cabinet. At all events, after being defeated by one or two votes on preliminary motions during the hectic night of June 25, the Government apparently came to the conclusion that the Progressives had deserted it and that a vote of censure was imminent. At this juncture, Mr. King took the bull by the horns and advised the governor-general to dissolve Parliament.

The latter found himself in an admittedly disconcerting predicament. No governor-general since federation had ever refused a prime minister's request for dissolution. Yet here was an unprecedented parliamentary situation: a minority government was asking for a second election only six months after the opening of the first session of the parliament of which it was a part; essential supply and revenue bills were still in the making; the possibilities of an alternative government had not been explored. Why not take the risk of refusal and give Mr. Meighen a chance, if sustained by enough Progressive votes, to direct affairs for the rest of the session, thereby saving the country the expense and turbulence of another campaign likely to turn out as indecisively as the 1925 contest? Such would appear to have been Lord Byng's reasoning when he emphatically declined Mr. King's request, and, immediately

[2] Senator Bureau, however, had been replaced in September, 1925, by Mr. George H. Boivin.

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following the latter's resignation on June 28, called upon the Conservative leader to form a government. Rumors have it that Mr. Robert Forke, the titular chief of the Progressive group, was also called into conference by Lord Byng and at least apprised of what had taken place, although it is not assumed that the purpose of such an action, even if it occurred as reported, was to draw from Forke any promise of support for a Conservative ministry.[3] But later in the same day (June 29) an informal meeting of the Progressives was held and a memorandum issued to the effect that they would sustain Mr. Meighen on the essential business that needed to be wound up before adjournment.

The jubilant demonstrations of the Conservative members to which the announcement of Mr. King's resignation had given rise were destined, however, to be short-lived. For Mr. Meighen, in order to keep intact his slender majority, had to resort to the dubious expedient of appointing six "acting" ministers, without salary or portfolio, to carry on until the close of the session, when, as required by constitutional practice, they could be re-elected to the House. It was upon this horn of a nasty dilemma that the Conservative leader lost the support of the vacillating Progressives and suffered a vote of no confidence by the meagre minority of one in the early hours of July 2. Filled with perhaps a justifiable sense of grievance in that the governor-general had not held his resignation in suspense until a new ministry was formed—a customary British procedure—but instead had precipitately accepted it, Mr. King apparently had felt free to obstruct at every turn. With unusual force and eloquence, he denied that there was a legally constituted ministry at all, so that even the Progressives were convinced of constitutional irregularities. Thus for a second time in four days Lord Byng faced a prime minister asking for dissolution; and in this instance it was as quickly granted as Mr. King's resignation had previously been accepted. Contrary to conventional procedure, moreover, the governor-general failed to present himself before Parliament to inform it of the dissolution and to give assent to legislation already adopted; in fact, the House learned of its death-warrant from rumors that spread like lightning through its corridors.[4] Ninety bills, among them the main supply grants and a measure to provide for a new scheme of long-term farm credits, fell by the way-side as a result of this extraordinary action, which meant that until a new parliament was elected and convened,

[3] Cf. the *Round Table*, Sept., 1926, for speculations as to what actually happened.

[4] M. Bourassa complained that he first heard of it from an Asiatic consul he met casually strolling through the lobbies of Parliament.

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the Government would have to confine its expenditures to salaries and necessary operations as provided for by governor-general's warrant.

Public statements were issued by the two rival leaders at the time of dissolution to justify their respective positions and prepare the stage for the electoral struggle. Mr. Meighen declared: "The fact of this defeat, coupled with a consideration of the chaotic condition into which public affairs have been drifting and the too evident instability of the Government, necessitated, in my opinion, an early appeal to the electorate"; while his Liberal opponent hastened to center attention upon "unwarranted use of the prerogative." "The issue," the latter pointed out, "which above all others is now before the people is whether or not government in Canada is to be carried on in accordance with the expressed will of the people's representatives in Parliament under a system of responsible self-government."[5] Henri Bourassa, the fiery nationalist, publicly branded the whole episode as a *coup d'état*, while another French-Canadian member of the House asserted: "It forbodes (sic!) blood may have to flow ere Canada's lost liberties are restored."[6]

Stripping the issue of these palpably exaggerated interpretations, one is inclined to agree with the Toronto *Globe* that "to be honest about it, it is the political and not the constitutional aspect that concerns both parties."[7] For in Canada, as elsewhere, the party in power enjoys a distinct tactical advantage in that the Government fixes the date of the polling and controls the election machinery. That Lord Byng committed an error of judgment in refusing dissolution to Mr. King is arguable; moreover, the Australian precedents of refusal in 1904, 1905, and 1909, invoked by certain Canadian Conservatives in the current crisis, may be offset by the consent of the governor-general of the commonwealth to a double dissolution in 1914. As Keith suggests, the tendency throughout the dominions since the war has been toward the application of the principle of full party responsibility, unchecked by the exercise of independent discretion by the representative of the crown.[8] Yet it would seem to the disinterested observer that the Liberal prime minister was in a somewhat doubtful moral position in view of the fact

[5] Quoted in the *New York Times*, July 3, 1926.

[6] Cf. "The Constitutional Crisis in Canada," in the *Round Table*, Sept., 1926.

[7] Quoted in the above article.

[8] Cf. his *Imperial Unity and the Dominions* (Clarendon Press, 1916), 85–120, for an illuminating discussion of this development. Kennedy, also, characterizes the refusal of dissolution as an "act of extreme danger," in *The Constitution of Canada* (London, 1922), 383.

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that the actual divisions in the House tended to indicate that Mr. Meighen would be able to carry on an alternative government. However that may be, it is significant to note that not even Mr. King, in his later ringing campaign denunciations of an act which "goes to the very heart of self-government of the dominions," cared to imply that the governor-general had not acted in good faith. Nor is there evidence that the latter was motivated by any ulterior design with a view to having at Ottawa, when the Imperial Conference met, a Conservative government favorable to closer coöperation with Britain.

As the campaign progressed, the Liberals found it advisable, at least when speaking in Conservative strongholds, to assume a less vociferous attitude in adverting to the constitutional aspects of the question. Aside from the apparent trend of opinion at home, they may have been not unmoved by the fact that the British secretary of state for the dominions had formally dissociated the Imperial government from all responsibility for Lord Byng's action. For on July 29, Mr. Amery told the House of Commons: "We are no more entitled to interfere than the dominions would be in a constitutional crisis at home."[9] This position, incidentally, was unintentionally prophetic of the formal pronouncement of dominion "equality of status" which was to emanate from the Imperial Conference not quite four months later.[10]

Naturally, the Conservative campaign attack endeavored to keep the smuggling issue in the foreground. "The King government," vigorously contended Mr. Meighen at Montreal on August 29, "went into partnership with smuggling"[11] Millions of dollars of revenue, he continued, were lost to Canada by maladministration and dishonesty. But some of his lieutenants patently over-played their hand in ascribing to Liberal ministers specific acts reflecting upon their personal character. Such charges were so easily disproved that the smuggling issue tended to become as profitless to the Conservatives as the "cry of colony" became to the Liberals. Tactical considerations, therefore, suggested increasing stress upon less sensational subjects. In the eastern provinces, a general increase in tariff schedules was promised; in the west, emphasis was laid upon a "brick-for-brick" policy for farm

[9] Quoted in the *Christian Science Monitor*, July 31, 1926. The *Manchester Guardian* argued similarly. Cf., for example, its *weekly* edition of July 9, 1926.

[10] Cf. *New York Times*, Nov. 21, 1926, for a summary of this declaration, which emphasized the fact that henceforth the governor-general should be the representative, not of the British Government, but of the crown only.

[11] *Montreal Gazette*, Sept. 1, 1926.

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products; that is, upon the enactment of a scale of duties equally as high as the American tariff. The Liberals were assailed "not because of their tariff policy, but because they have none."[12] In Quebec, Mr. Meighen tried to allay the deep-seated French-Canadian hostility to his war-time stand on conscription by promising, in speech after speech delivered in fluent French, that in the future service overseas would be conditioned upon voluntary enlistment. Mr. King, moreover, was chided because of undue "leanings toward the south and subservience to Wall Street;" to which the latter replied that he had degrees from Edinburgh and Oxford, as well as from Harvard.[13] This stooping to petty personalities was again illustrated by the glee with which Mr. Cardin, former Liberal minister of marine and fisheries, derided Meighen for naming his son "Theodore Roosevelt" instead of "John A. Macdonald" Meighen.[14]

Realizing that their most dramatic issue was wearing threadbare everywhere outside Quebec, the Liberal campaign managers fell back, in the main, upon improved prosperity and tax reduction as their best appeals. They repeatedly impressed upon their hearers in the east (1) that Canada now had the largest favorable balance of trade in her history; (2) that railway consolidation had been faithfully carried out by the Liberal government since 1921; and (3) that no changes in tariff policy would be made which would injure the standing of any legitimate industry in Canada; while their tone in the prairie provinces, where King often spoke with Forke, the Progressive leader, was obviously pitched to satisfy the agrarian demand for genuine tariff reduction. In other words, the tariff remained truly "orthodox" as a Canadian political issue: the sectional heterogeneity of both the Liberal and Conservative parties prevented any consistently sustained opposition of views on the subject.

At the close of a strenuous 10,000 mile campaign tour lasting five weeks and extending into every province of the dominion, Mr. King took a caustic fling at his opponents by denouncing them for governing by "warrant." "These gentlemen," he thundered, "have got hold of the Treasury and are looting it day after day."[15] And again, this scathing indictment: "You will not find in the history of Canada a Conservative

[12] *Montreal Gazette*, Sept. 6, 1926.

[13] C. Wittke, "The Conservative Defeat in Canada," in *Current History*, Nov., 1926.

[14] *Montreal Gazette*, Sept. 7, 1926.

[15] *Ibid.*, Sept. 2, 1926.

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prime minister who would do the things Mr. Meighen has done."[16] Both leaders concluded their campaign by imploring the voters to put an end to the intolerable instability by sending their respective parties back to Ottawa with a clear majority of seats. On the eve of the election the headquarters of each camp predicted a decisive victory at the polls. But to the independent press it looked rather like another stalemate similar to the one eleven months before.

In all, some 530 candidates, fifty fewer than in 1925, contested the 244 seats (one constituency in Manitoba went by acclamation to a Liberal-Progressive). The Conservatives made 240 nominations; the Liberals, 214; the Progressives 24, all of which were in Ontario and Saskatchewan; the Liberal-Progressives, 16, confined to the two last-named provinces and Manitoba; Labor, 18; and there were 21 independent candidates. To reduce three-cornered contests to a minimum, the Liberals supported in forty-six constituences—all but one west of the province of Quebec—Progressive, Labor, and independent candidates. There were, however, 35 triangular and two quadrangular contests, leaving 207 straight two-party fights. All but two of the members of the Meighen and King cabinets faced direct contests with single opponents. Two women were included among the nominees: Miss Agnes Macphail, who ran in Grey Southeast, Ontario, as a Progressive and was elected; and Miss Kathleen Bennett, who upheld the Liberal banner in Toronto East, but failed to be returned. It was estimated by the *Montreal Gazette*, the leading Conservative newspaper in Quebec, that the cost of the election to the Government would reach at least $1,700,000, which was the total for the election of the previous year.[17] In Canada, some 80,000 election employees are appointed by the chief electoral officer of the dominion to serve as deputy returning clerks, poll clerks, rural registrars, returning officers, election clerks, and revising officers. In addition to these officials, each candidate is authorized to install at his own expense an agent or a scrutineer, or both, in and near the polling places, of which at present there are around 28,000. This must have added at least 100,000 more persons to the list of election personnel, not counting the small army of voluntary or paid workers assisting candidates outside the official polling places.

The result of the polling gave the Liberals a clear gain of eighteen seats, reduced the Conservative strength in the House from 117 to 91

[16] *Montreal Gazette*, Sept. 3, 1926.

[17] *Ibid.*, Sept. 4, 1926.

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seats, and increased minor party and independent contingents from twenty-seven to thirty-five seats. The standing of the parties in the new parliament will be as follows:[18]

Provinces	Liberals	Conserv.	Prog.	Lib.-Prog.	U.F.A.	Lab.	Indep.	Total
Prince Edw. Isl.	3	1						4
Nova Scotia	2	12						14
New Brunswick	4	7						11
Quebec	60	4					1	65
Ontario	25	53	2	2				82
Manitoba	4		4	7		2		17
Saskatchewan	17		2	2				21
Alberta	3	1			11	1		16
British Columbia	1	12					1	14
Yukon		1						1
Total	119	91	8	11	11	3	2	245

It will be observed from the above tabulation that while the Conservatives retained majorities in Nova Scotia, New Brunswick, Ontario, and British Columbia, they won only a single seat in the prairie provinces. Even in Ontario, the Liberals reduced the Conservative strength from 69 to 53 seats by making serious inroads upon the latter party's industrial strongholds. Quebec remained almost solidly Liberal, the Conservatives holding merely the four seats they had in the old parliament. To add to Premier Meighen's humiliation, he himself and five of his ministers went down to defeat in their own constituencies.[19] The United Farmers of Alberta, replacing the moribund Progressive party organization in that province, returned eleven of their twelve candidates.

An analysis, however, of the party distribution of the popular vote, which slightly exceeded 3,100,000, or close to seventy per cent of the eligible electorate,[20] reveals that the actual overturn of opinion was relatively slight—by no means proportional to the changes in party strength in the newly elected parliament. For not only did the Conservatives poll virtually as large a popular vote as in 1925, but the in-

[18] These returns are unofficial, as reported by the *Canadian Press*, Ltd., an impartial news-gathering agency.

[19] His defeated colleagues included E. L. Patenaude, minister of justice; Andrè Fauteux, solicitor-general; Eugene Paquet, minister of health and soldiers' civil rëestablishment; Donald Sutherland and Dr. Morand, ministers without portfolio.

[20] Non-voting in dominion elections since the war has approximated thirty per cent of the eligible electorate in each instance. Cf. *The Canada Year Book* (1925), p. 1053, for statistical data on the popular vote since 1911.

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crease in the total vote of the Liberals was only 100,000. The following table compares the popular vote and seats won (by parties) for the two elections:[21]

Parties	1925		1926	
	Per cent of pop. vote polled	Per cent of seats won	Per cent of pop. vote polled	Per cent of seats won
Conservatives	44	48	47	37
Liberals	40	41	43.5	48.5
Prog. and miscellaneous	16	11	9.5	14.5

Whereas in 1925 the single-member, plurality system of representation so operated as to give the Conservatives four per cent more seats than they were proportionally entitled to, the result a year later reversed the advantage: the Conservatives then returned ten per cent fewer members than they would have elected on a strict proportional basis, while the Liberals were the beneficiaries of a five per cent greater representation in the House than they earned by their showing at the polls. Similarly, a five per cent disadvantage suffered by the Progressives and other minor parties in 1925 was converted into an equal advantage in 1926. It would appear that the Liberals benefited chiefly (1) from the shifting of considerable numbers of Progressives and Conservatives in Ontario to the Liberal camp, the former because they doubtless felt that protest merely for protest's sake was no longer in point, and the latter because they were antagonized by Mr. Meighen's obvious catering to the French-Canadians during the campaign; and (2) from the informal working agreement for electoral purposes between Liberals and variously-hued progressives in Saskatchewan and Manitoba. The continuation of economic discontent in the maritime provinces, which probably accounted for the sharp decline in voting in that section of the country, seemed also to work to the Liberals' net advantage, for they were able to pick up three seats in New Brunswick and one in Prince Edward Island. For the dominion as a whole, moreover, the total minor party vote suffered a shrinkage of at least 100,000 from the 430,000 polled in 1925.

Occupationally, the newly elected House of Commons presents a complexion almost identical with that of its predecessor:[22]

[21] These percentages, for the 1926 election, are approximations only, based upon slightly incomplete and unofficial returns (9 constituencies missing), as published by the *Montreal Gazette*, October 6, 1926.

[22] These tabulations are based upon the list of candidates and occupations given in a preliminary print of Part IV of the report to be issued under Section 72 of the Dominion Election Act, by the Chief Electoral Officer of Canada.

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Distribution of occupations	House elected in 1925		House elected in 1926	
	Number	Per cent of total	Number	Per cent of total
Lawyers	57	23.3	58	23.7
Farmers	51	20.8	53	21.6
Physicians	30	12.2	30	12.2
Merchants	27	11.0	28	11.4
Manufacturers	16	6.5	13	5.3
Salesmen	11	4.5	11	4.5
Journalists	10	4.1	10	4.1
"Gentlemen"	6	2.4	7	2.9
Miscellaneous or doubtful	37	15.2	35	14.3
Total	245	100.0	245	100.0

In contrast with American legislative bodies, the relative wideness of occupational distribution shown by this analysis stands out in significant relief: one at once notices that the legal profession is not overwhelmingly preponderant; one also detects the presence of sizable contingents of farmers and physicians, the former group hailing almost entirely from Ontario and the West, and two-thirds of the latter coming from Ontario and Quebec.

Eleven days after his defeat at the polls, Premier Meighen handed to Lord Byng the resignation of his cabinet. His ill-fated government had been one of the shortest-lived since federation. By an ironical turn of circumstances, the last official act of the retiring governor-general was to swear in as the head of the new government, on September 25, the man to whom he had refused the right to a dissolution of Parliament three months before.[23] To what degree Lord Byng's bitterly criticized course of action had diminished his widely acclaimed personal popularity it would be difficult to estimate. Nor can one measure with certainty its adverse effect upon the Conservatives' chances in the general election, which, whatever the governor-general had or had not done, would inevitably have come sooner or later. Partisan insistence upon its importance to Canada's "national" status in the British Commonwealth may also be discounted by subsequent developments at the Imperial Conference, where dominion autonomy was accorded the most unmistakable recognition it has yet received from London.[24] In this

[23] Lord Byng's successor, Viscount Willingdon, was sworn in as the new governor-general at Quebec on October 2, amid the traditionally colorful trappings of empire. The interest of the populace in the event seemed as keen as ever.

[24] The appointment of Mr. Vincent Massey as Canadian minister at Washington happily synchronizes with these developments.

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regard, it may be—who knows?—that the Canadian representatives at the Conference, Premier King and Mr. Ernest Lapointe (his minister of justice), used the Byng episode as ammunition behind the demand for a more explicit statement of the governor-general's position in the future. But no more in Britain itself than in the dominions has constitutional doctrine as to the right of dissolution under a *tri-* instead of a *bi-*party situation clearly delimited the position of the crown.[25]

For the restoration of parliamentary stabilization in Canada, however, the consequences of the 1926 election are, on the whole, likely to be favorable. First of all, the Liberals and the Progressives now seem to be in more complete agreement on major issues than at any time since the agrarian movement took on a political consciousness ten years ago. On such outstanding issues as the tariff, the completion of the Hudson Bay Railway, and the retention of the "Crow's Nest" scale of freight rates on agricultural products, Premier King and Robert Forke, the Progressive leader, have declared their intention to march hand in hand. More significant still is the latter's entry into the new Liberal cabinet as minister of immigration and colonization, although that does not *ipso facto* mean that all his followers will consistently support Mr. King.

Thirdly, the composition of the new government, which took office on September 25, was obviously constructed with a view to conciliating the various factions in the Liberal party and solidifying its strength.[26] The personnel of the cabinet includes as many as seven French-speaking ministers, of whom one, P. J. Veniot, will be the first French-speaking member from New Brunswick in the history of the dominion. Another innovation was to accord representation to the French-Canadian

[25] Cf. Harold J. Laski, "The Position of Parties and the Right of Dissolution," *Fabian Tract* No. 210, for a vigorous analysis of the dangers flowing from the failure of the crown to accept ministerial advice in *all* circumstances.

[26] The make-up of the new cabinet, as announced in the press on September 25, is as follows: prime minister and secretary of state for external affairs, W. L. Mackenzie King; justice, Ernest Lapointe; finance, J. A. Robb; railways and canals, C. A. Dunning; interior, Charles Stewart; public works, J. C. Elliott; agriculture, W. R. Motherwell; trade and commerce, James Malcolm; health and soldiers' civil re-establishment, Dr. J. H. King; immigration and colonization, Robert Forke; marine and fisheries, P. J. A. Cardin; labor, Peter Heenan; defense, Col. J. L. Ralston; postmaster-general, P. J. Veniot; secretary of state, Fernand Rinfret; solicitor-general, Lucien Cannon; ministers without portfolio, Raoül Dandurand, J. E. Sinclair, and E. A. Lapierre.

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minority in Ontario by calling E. A. Lapierre, of Nippissing, into the cabinet as minister without portfolio. Both to reassure the manufacturers on fiscal matters and to restore public confidence in the customs administration, Mr. King selected as the new head of the ministry of customs and excise Mr. W. D. Euler, an able Independent Liberal of German descent, rather than a straight party man. Although eight of the twenty ministers were new members, the others had served in previous King cabinets; and while considerable shifting of portfolios was resorted to in order to take care of the new appointees, Messrs. Robb and Lapointe, both popular and effective administrators, were reassigned to their old places in the ministries of finance and justice respectively. In accordance with time-honored custom, the peculiar federal characteristics of the Canadian cabinet were preserved in the allotment of places to the various provinces: Quebec received six; Ontario, five; Saskatchewan, three; and the six others, one each.[27]

As this note is written, the new (16th) parliament is ready to convene on December 9. In it the Opposition will have a new leader, Mr. Meighen having insisted, against prolonged protest, that his resignation as the official head of his party be regarded as final. He will be succeeded by Mr. Hugh Guthrie, who on October 11 was elected House leader by a caucus of Conservative senators and members-elect of the House of Commons held at Ottawa. One of four senior members of the House, Mr. Guthrie has since 1900 continuously represented the South Wellington constituency of Ontario. He was solicitor-general in 1917 and minister of militia and defense in 1920–21 and again in the ill-starred Meighen government of 1926. While his elevation to party leadership was announced as merely a temporary arrangement for the coming session (it will be followed by a more permanent selection in 1927), his public utterances before the opening of Parliament were strongly indicative of the tactics likely to be followed by the Conservatives. Their course, he declared at Montreal on October 24, would be rather to assist than to obstruct the new government in carrying out measures for the benefit of the country; the Conservative party, he added, stood for "the building up of a Canadian national spirit coupled with the maintenance of the British connection, the strengthening of the imperial ties, the establishment of a firm and acknowledged basis of Canada's position as a self-governing entity within the British Empire and of her un-

[27] The failure of the Canadian Senate to function as a federal institution has in part been compensated by this unwritten rule insuring provincial and linguistic minorities representation in the cabinet.

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doubted rights to manage and settle her own affairs"[28]—admittedly good Liberal doctrine as far as it goes. In any event, the new session is likely to be considerably freer than the last from petty political blackmailing and bitter partisan recriminations. On the other hand, it is doubtful if really fundamental policy-making will mark its deliberations; for in Canada, much as in United States, the dominant mood of the leadership of the two old parties appears to be a timid, more or less helpless, acceptance of the status quo. For the time being, moreover, insurgency on the left gives way more and more to regularity.

Students of the theory and practice of popular representation, however, will watch with keen interest the progress of the Canadian Conservatives' attempt to secure for urban districts a representation more nearly proportional to their population.[29] As things now stand, the rural voter is, in many instances, almost equal to two city voters. Since the strength of the Conservatives comes largely from the cities, they have been in recent elections the chief sufferers from the existing system of representation. Unless the Liberals and the agrarian contingents meekly yield on this issue—a course of action rather too nonpartisan to be seriously expected—Ottawa may become the scene of a "city vs. country" conflict not unlike that with which political life in the United States is now ominously afflicted.

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Judicial Review of Legislative Acts in Germany. The German commonwealth is a federation of states, each operating under its own constitution and laws; though subject to the national constitution, which is the fundamental law of the commonwealth, and to other national laws and ordinances. Hence the general problem of judicial review over legislative acts, in so far as it relates to the central govern-

[28] *Christian Science Monitor*, Oct. 24, 1926.

[29] In working out the periodic redistributions of seats in the House, Canadian practice has been to accord more favorable treatment to rural than to urban districts, on the ground (1) that city populations have greater solidarity and compactness and (2) that the sparseness of rural populations requires smaller geographical units for purposes of political representation. In the past, both parties have accepted this principle; now it appears that the Conservatives are going to demand equality of representation on a more strictly populational basis. Cf. the speech of the new Conservative leader at Montreal on Oct. 23, as reported in the *Christian Science Monitor*, Oct. 24, 1926.

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ment, includes (a) the question of the right of judicial review of state constitutional provisions or state laws and ordinances, when in conflict with the national constitution, laws, or ordinances, and (b) the question of the right of judicial review in respect to national laws, as against the national constitution.

The first of these questions is answered in the constitution itself, for cases where the issue is raised by the competent state or national authorities, by the following provisions: (1) "National law overrules state law"; (2) "If there is a doubt or a difference of opinion as to whether a provision of a state law is consistent with national law, the competent authorities of the nation or of the state may appeal for a decision to a supreme judicial court, in accordance with the more detailed provisions of a national law" (Art. 13); and (3) "Disputes on constitutional questions arising within a state in which no court exists for their decision, as well as disputes, outside the domain of private law, between different states or between the nation and a state, are decided, at the instance of either party to the dispute, by the supreme judicial court of the German nation, provided that no other federal court is competent to deal with them" (Art. 19).

In the last-mentioned article, only the clause regarding disputes between the nation and the state is of interest for the subject now under consideration.[30] In neither the constitution nor the executory laws, however, is any provision made for the settlement of the question of constitutionality as between the state and the nation, unless it is raised by a competent national or state authority; while Article 19 expressly stipulates that the supreme judicial court is competent only in cases there listed which are outside the domain of private law. The problem therefore remains, To what extent do the courts possess the right to examine into norms set by state law as related to those set by the national constitution and the national laws and ordinances, when the

[30] According to the laws which carry these provisions into effect, the supreme judicial court, which acts on constitutional cases, is to consist ultimately of members of the supreme administrative court (not yet established) and of the supreme national court (Reichsgericht) which handles cases of private as well as public law. Meanwhile, it is composed of members of the latter court, the president acting as chairman; and of one member from the highest administrative court in each of the states of Prussia, Bavaria, and Saxony. The supreme judicial court is competent for cases arising under the constitutional articles quoted above (13 and 19), and under various other articles, as 2-12, 14-15. *Gesetz über den Staatsgerichtshof*, July 9, 1921, RGBI, 905. See also *Handbuch für das Deutsche Reich*, 1916, p. 52.

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issue is raised by a private individual, or when the court must pass upon such a question in order to decide the case?

This problem was fairly faced, and a clear and unequivocal answer was given, in a decision rendered on December 15, 1921, by the criminal division of the Reichsgericht. Certain individuals had been arrested and fined for assembling contrary to the provisions of a Württemberg statute relating to police and safety, the amendments thereto, and an ordinance issued thereunder, which forbade open air meetings until further notice. They asserted that the statute as amended and the ordinance injured them in their rights of assembly, as guaranteed by Article 124 of the national constitution, taken in connection with the national law of assembly of April 19, 1908 (RGBI. p. 151); and that the amendment to the state statute was not in harmony with the provisions of Article 48 (paragraphs 2–5) of the national constitution, which provides by implication that a state government may abrogate the right of assembly only when public order and security are seriously threatened. In this case, then, the issue of constitutionality was not raised by state or national authorities, but by private individuals who claimed that their rights under the national constitution and national laws had been injured by state laws and ordinances. The decision was based on several grounds, including the nature of the judicial function, the general principle of judicial examination as established in Article 13 of the constitution, and the general status of federated states. After a theoretical discussion of these points, the court declared:

"The judge is authorized and obligated to examine into norms of every sort set by state law—including those set by the state constitutions and laws amending the constitutions—to establish whether or not they conflict in form or substance with a national statute, with a legal ordinance of the nation, or with the common law of the nation; and .... he must refuse to enforce them if they do."[31]

Almost four years passed after this case was decided before the courts gave an answer to the question of judicial review of national laws. For several reasons, this question presented much greater difficulties. The German constitution is silent on the right of the courts to declare national legislative acts invalid. In this respect, an analogy exists with the United States. However, the position of the legislature in Germany is quite different from that of Congress. While Congress is not in and of itself a constituent body, becoming such only in coöperation with the

[31] *Entscheidungen des Reichsgericht, Strafsachen*, 56, p. 177 ff.

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state legislatures or state conventions, the Reichstag is a constituent authority. It has power to amend the constitution of the Reich by a two-thirds vote of a quorum of two-thirds of its members. Only in very exceptional cases does any other authority enter materially into the process of constitutional change. The people may initiate a constitutional amendment, but the assent of a majority of those entitled to vote is needed for enactment. The formal consent of the Reichsrat is required to an amendment passed by the Reichstag; but if this is not given, the Reichstag may repass the amendment, which is then valid, unless the Reichsrat insists upon its submission to the people, whose decision is final. Both of these provisions are so difficult of execution that the statement may freely be made that to all intents and purposes the Reichstag is the constituent authority. Because of these facts, as well as the historical reluctance of the German courts to interfere with the process of legislation, it was felt by many able commentators upon the constitution that the courts would not take jurisdiction in a case which necessitated a decision upon the constitutionality of a national law, but would choose to regard it as a political rather than as a judicial issue, and to leave it to the people, if injured in their constitutional rights, to elect a legislature that would restore and safeguard them. On the other hand, an imposing array of writers insisted that the courts had the right to declare invalid any acts of the Reichstag considered to be in conflict with the constitution.[32]

In a decision of the civil senate of the Reichsgericht on November 4, 1925,[33] this important question was definitely decided, to the effect that the courts are competent to inquire into the constitutionality of national laws. The question arose in connection with a case brought up under certain provisions of the much-discussed national valuation law. While the court upheld the law itself, it took occasion to state the fundamental principles governing the subject of judicial review of national laws. The decision covered not merely the specific points at issue, but also the question "whether and to what extent the courts are generally authorized and obligated to examine into the legal validity of a regularly promulgated national law." Most of the fundamental principles laid down in the case regarding the constitutionality of state laws, such as the mutual relationships of authorities and the inde-

[32] For a list of authorities on both sides of the question, as well as an interesting discussion, see an article by Prof. Dr. Bühler in *Deutsche Juristen-Zeitung*, 1921, Heft 17–18, page 580.

[33] *Entscheidungen des Reichsgerichts, Civil Sachen*, 111, p. 320.

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pendence of judges, were applied here. While the court took into consideration the language of the national constitution to the effect that the judges shall be independent and only subordinate to the law, it stated: "This latter provision does not prevent the judge from denying the validity of a national law or the individual provisions of such a law, in so far as they contradict other superior provisions which the judge must observe. This is the case, if a statute is in conflict with a legal principle established by the national constitution, and has not been passed according to the requirements of Article 76 . . . for a constitutional amendment. For the provisions of the national constitution can only be invalidated through a constitutional amendment passed in the regular form. They remain binding upon the judge, therefore, despite conflicting provisions of a later national law which has been passed without observation of the requirements of Article 76; and they make it necessary for him to set aside as invalid the conflicting provisions of the later law. . . . . Since the national constitution itself contains no provision removing from the courts and bestowing upon some other specified authority the right of deciding upon the constitutionality of national laws, the right and the duty of the judge to examine into the constitutionality of national laws must be recognized."

The viewpoint of those who wished the court to assume this function is well expressed by a writer in the *Deutsche Juristen-Zeitung*,[34] who says: "It is certainly a high and momentous duty of the court to watch over the constitutionality of laws; it is gratifying that the decision of the Reichsgericht emphasizes very definitely the right of the court to such examination. It may, indeed, cause a good deal of discomfort if the courts refuse to recognize the validity of a law promulgated in the National Law Gazette, and the courts ought to enter into the examination as to validity with a good deal of caution and discretion. On the other hand, it is exactly in our democratic state, with an all-powerful parliament, that the pressing need is found for the existence of an authority that will serve as a barrier against a transgression of the boundaries for legislation established in the constitution."

No extended discussion of the logic of the court in taking this viewpoint, or of the results of this decision, can be undertaken here. It should be observed, however, that the logic of the matter in Germany is not nearly so strong as in the United States, since the German courts

[34] January 8, 1926, p. 13. *Die Rechtsgültigkeit des Aufwertungsgesetzes*, by Dr. Mügel.

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are passing upon acts of an authority actually possessed of constituent powers, even though it may at a given time be acting merely in a legislative capacity; whereas those of the United States are passing upon the acts of a legislature which is not in and of itself a constituent authority, but which acts always as the agent for such authority, unless assisting in the constituent process. If the German courts declare an act unconstitutional, the Reichstag can make it an amendment to the constitution by repassing it in due form. For the courts to declare unconstitutional the acts of an authority possessed of such powers is quite a different matter from making a similar declaration as to the acts of an agent. In the latter case they may actually prevent acts in excess of the agent's powers; in the former, to all intents, they merely criticise the legislative process. There seems to be no irrefutable reason why the German courts might not interpret the constitutional expression applied to them, "subordinate only to the law," as meaning that the laws passed by the legislature were beyond their jurisdiction to declare unconstitutional.

While the decision is of very great significance, there are several reasons which render it far less important than the decision of Marbury vs. Madison. The first of these is the fact, already mentioned, that the legislature may change the constitution, and that, according to the clear implications of the language of the court, the process laid down in Article 76 is sufficient to establish any law as a constitutional amendment in case it conflicts with an existing provision. The second is that the powers given to the national government are so comprehensive as to eliminate many questions concerning the scope of the national competence, such as have arisen so frequently in the United States. In the third place, there are few specific constitutional limitations upon the Reichstag, as compared with those placed on Congress. The fourth consideration is the historical viewpoint of the German courts in respect to the acts of the legislature, namely, one of non-interference. The fifth, and perhaps the most important, reason is the power of the Reichstag to remove from the courts the functions of judicial review by a change in the constitution. In case the courts should begin to examine into the constitutionality of laws to an extent which the Reichstag felt to be unwarranted, it could protect itself, since in the last analysis the Reichstag rather than the courts can determine law, fundamental as well as statutory. The differences in the relative positions of the legislature and the courts in Germany and the United States will probably prevent judicial review from evolving there some of the features which have

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caused the most adverse criticism here. The development of this function of the court in Germany during the next decade or two will, however, be of great interest to the jurist and the political scientist.

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The German Referendum on the Princes' Property. On June 20, 1926, for the first time in history, a large nation made a trial of direct democracy. On that day the German electors were summoned to the polls to pass judgment upon the question of the expropriation of the property of the ex-rulers. The measure voted upon was worded in an extreme fashion, as the leaders of the Left, who framed it, felt that it was necessary to obtain a clear answer to the exorbitant demands made by the fallen dynasties.[35] Although the princes had been given large indemnities by various states, several of them had brought suits for larger claims and had won.[36] Created as they were by the old régime, the courts had very often refused to distinguish between the private property of the princes and the property of the state. By reason of the court decisions, the German people were in danger of losing not only considerable sums of money but inestimable art treasures as well. It was this situation that gave the Communists and Socialists an opportunity to demand popular support for complete confiscation of the princes' property.

[35] The text of the referendum was as follows:

"The German people, through popular initiative and referendum, decree the following law:

1. The entire fortune of the princes who have ruled in any one of the German states until the revolution of 1918, as well as the entire fortune of the princely houses, their families and family members, are confiscated without compensation, in the interest of general welfare.

2. The confiscated property is to be used to aid:
   (a) The unemployed
   (b) The war invalids and the war widows and orphans
   (c) Those dependent upon the public
   (d) The needy victims of inflation
   (e) The agricultural laborers, tenants, and peasants through the creation of free land in confiscated estates.

The castles, residences, and other buildings are to be used for general welfare, cultural and educational purposes, especially for convalescent hospitals for war invalids, war widows and orphans, and for the socially dependent, as well as for children's homes and educational institutions."

[36] R. Lewinsohn, *Histoire de l'Inflation* (Paris, 1925).

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In order to set in motion the popular law-making machinery in Germany it is necessary for ten per cent of the electors to sign the initiative petition; and signatures can be received only at the specified polling places during a limited period of time.[37] In other words, to sign an initiative petition, a German elector must go to as much trouble as an American elector experiences in registering for voting. In spite of the inconvenience involved, 12,523,939 German electors signed the Communist-Socialist petition between the dates of March 4 and 17, a number considerably larger than the combined vote of those two parties in 1924, showing that many of the middle class also favored the measure.

Since the petition requirements were more than fulfilled, the measure came before the Reichstag for action. On May 6 the proposal was rejected by that body, which necessitated its being referred to a popular vote. According to a ruling of the Government, the bill was held to be an alteration of the constitution, and its adoption therefore required the affirmative support of a majority of all the registered voters.[38]

The issue was most clearly drawn between the Communists and the Nationalists. The former found the referendum very effective for propaganda purposes, much more so than did the Socialists. The measure was one upon which the working classes could present a united front; the expropriation of the princes was the first step in a general attack upon private property, and a demogogic appeal could be made on the ground that the confiscated wealth would be devoted to promotion of the general welfare. The German Nationalist and the German People's parties, on the other hand, raised the Bolshevist scare and denounced the measure as robbery.

The chiefs of the moderate parties could not agree upon any policy regarding the referendum. The Democratic party left its members free to follow their own convictions.[39] Dr. Schact, president of the Reichsbank, and other prominent members of the party, sent in their resignations to the party because it did not take a definite stand against the proposal. On the other hand, the Democratic papers in Berlin printed articles hostile to the ex-rulers, and it was clear that most of the rank and file of the party would support the measure.[40] The Center party was also split upon the issue. Officially, the party was opposed to the

[37] G. Kaisenberg, *Volksentscheid und Volksbegehren* (Berlin, 1926).
[38] G. Kaisenberg, *Der Weg der Volksgesetzgebung* (Berlin, 1926), p. 28.
[39] *Vössiche Zeitung*, May 21, 1926.
[40] *Berliner Tageblatt*, June 19, 1926.

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proposal, but the Catholic trade-unions and young people's organizations refused to be bound by the central organization.[41]

The campaign waged against the referendum by the nationalists and industrialists presented several interesting features. The Hindenburg letter intrigue was one of these. This letter was a private document which the President wrote to Herr von Loebel, his presidential campaign manager, in which he denounced the gross ingratitude of the Germans who had signed the initiative petition.[42] Although the letter was obviously confidential, it was given wide publicity and was used generally for propaganda purposes. From a tactical standpoint, the master stroke of the conservative leaders was their order to their followers to stay away from the polls upon election day. Since an absolute majority of all the registered voters must vote in favor of a constitutional amendment in order to carry it, an elector who did not vote at all was acting as effectively against the measure as one who voted in the negative. This open boycott of the election by the Right virtually amounted to a destruction of the secrecy of the ballot. Threats were made by the Nationalists that those who went to the polls would be noted as Communists or Socialists. Before the voting, the Prussian ministry of the interior found it necessary to issue a warning that all attempts to prevent a free vote by boycott, dismissal, intimidation, or economic pressure were illegal and punishable. It is impossible to say how many electors who at heart favored the measure stayed at home on election day because of one or another of these pressures. Upon the voting day, the Society of the Steel Helmets was very much in evidence; free counter attractions were organized in some quarters; and some of the voters were deceived by announcements that the election had been postponed.[43]

Under the circumstances, it is not surprising that the measure failed to secure the necessary absolute majority. Its supporters had to contend, not only against the electors who voted against them and against those who deliberately abstained from voting, but also against those who did not vote either because of indifference or because of physical difficulties. The monarchists had on their side the sick, and even some deceased

[41] *Germania* maintained a significant silence upon the issue.

[42] The letter read in part as follows: "I need hardly tell you that I, who have passed my life in the service of the kings of Prussia and of the German emperors, look on this petition for a referendum as a deplorable lack of traditional feeling and as a gross ingratitude . . . . a blow against the foundation of what is right and ethical."

[43] *Die Rote Fahne* and *Vorwärts*, June 21, 22, 1926; *Berliner Tageblatt*, July 1, 1926.

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persons whose names were still on the electoral lists. As it was, out of an electorate which nominally numbered 39,690,559 persons, 14,441,590 voted in favor of the measure, 584,723 voted against it, 559,406 cast blank or void ballots, and 24,104,840 did not vote. Of this latter number, it can be calculated on the basis of previous elections that over eight millions were habitual non-voters. The number of those who rallied to the support of the measure was far in excess of the combined Communist and Socialist vote of 1924 and approximated the total anti-Hindenburg vote of 1925.[44] If the rules for the referendum had been more like those in Switzerland, where a majority of the states and a majority of the total number of persons voting is sufficient for enactment, the measure would have had a good chance of being carried.

A detailed analysis of the election returns gives some indication of the economic cleavage between the groups for and against the proposal. In the great urban and industrial centers the bill secured the support of a majority of all the registered voters. In Berlin sixty-seven per cent, in Leipzig fifty-seven per cent, and in Hamburg fifty-six per cent of the electors on the lists were in favor of the referendum. The figures for the Catholic regions of Westphalia, Cologne, and Coblence show that, in spite of the stand taken by the Center party and the clergy, the number of votes for expropriation was double that of the combined Communist and Socialist vote of 1924. On the other hand, in the rural districts, such as East Prussia and southern Bavaria, where the Socialists were weak and the number of habitual non-voters was large, the proportion of the registered voters in favor of the measure scarcely reached twenty per cent.

Naturally, interpretations of the results of the referendum showed wide differences. The huge vote in favor of the measure was an impressive republican gesture. On the other hand, the discipline of the parties of the Right and the indifference of the great masses to extreme socialist measures was shown by the enormous number of persons who stayed away from the polls. The first trial of the referendum in Germany illustrates the difficulties that are encountered in trying to obtain a clear-cut expression of public opinion in a nation of sixty million people. The rigid rules laid down for the operation of the referendum in Germany enable the parties opposed to a given measure to fight it with a

[44] In the Reichstag elections of December, 1924, the Communists polled 2,709,086 and the Socialists 7,881,041 votes. In the second balloting for president in April, 1925, Hindenburg received 14,655,641, Marx, 13,751,605, and Thälmann, the Communist candidate, 1,931,151 votes.

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policy of enforced electoral abstention. Such tactics do not encourage the free expression of public opinion. It cannot be said that the German referendum, in its present form, is a satisfactory popular law-making device.

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Greece's Experiment with Proportional Representation. On November 7 Greece held its first general election under the system of proportional representation, using a modified form of the Belgian system. This innovation was imposed on the country despite the most strenuous opposition by all of the old parties, the majority of the press, and the bulk of public opinion, and its adoption was a clear victory of the minority parties, assisted by the Military League and the then dictator General Kondylis.

The arguments of the established parties in favor of the old plurality system ran on lines too familiar to require extensive statement here. The former system, according to its supporters, usually assures the election of large majorities, one way or the other, and enables Parliament to give the country what we call a strong government, such as Greece needed at the time of the election. Great Britain and the United States were offered as the outstanding examples of the efficiency of the two-party system, which is best served by the old-fashioned electoral method of absolute plurality. Naturally enough, Belgium was cited as the worst exponent of the evils of proportional representation.

Against these views the supporters of the new system argued that only by proportional representation is it possible to curb the excesses of large parliamentary majorities. This system, applied in Greece, would, in the opinion of those supporting it, destroy the old alignment of Venizelists and Anti-Venizelists, and thereby bring to an end a political feud that has divided the country for almost ten years. In addition, proportional representation was expected to bring into the parliamentary arena new parties and new personalities, to revive and modernize the political life of the country. Furthermore, the numerical strength of the new parties that "P.R." was expected to bring forth would be such as to make them mutually interdependent; and hence it would tend to the creation of a government by coöperation and mutual understanding rather than by arbitrary parliamentary force.

Whatever the merits and the shortcomings of the proportional plan, Greece went to the polls with an open mind, evidently bent upon giving

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the system a fair chance. The electoral scheme being both new and intricate, politically minded citizens took a fancy to it, as if, perchance, it were a new game. The election brought forth nearly a million voters in a country with universal male suffrage; from which it would appear that almost eighty-five per cent of all registered voters went to the polls. One million votes in a total population of seven million is a decidedly encouraging showing. True, a fine of a thousand drachmas—approximately thirteen dollars at the present rate of exchange—was imposed on those failing to vote, the aim being to check wholesale abstention, of which the country had a bitter taste in the elections of December 16, 1923, and again on April 21, 1926, when the entire opposition refused to participate in the voting as a protest against the dictatorial régime of the time.

The large old parties of the two main camps of Republicans and Royalists stood their ground well under the proportional plan. The former camp was represented by three parties, namely, Progressive Liberals, Conservative Liberals, and the Republican Union. The latter group was composed of the Popular Royalist party, the Free Opinion Moderate Royalists, and the Independent Royalist party. The first two parties of both camps had a full list of candidates in every district throughout the country. Then there were the independent extremists of both alignments, the Communists, the Agrarian and Refugee groups, and others, so that when the polls opened on November 7, there were in the field more than seventy-five separate party tickets—national, provincial, local, and personal—with their bewildering array of multicolored ballots and party emblems, and with a total of more than seven thousand candidates making their bids for the 286 seats. A total of fifty-one separate parties made a showing in the election; while more than forty independent individual candidates, exclusive of those elected, made their appearance in their individual lists, each with its own emblem. These were the candidates receiving at least one vote—and there were quite a few of them—while no one knows how many withdrew before the balloting.

When all votes and lists were duly sifted, the results, as given on November 15, showed the following figures: total vote cast throughout the country, 961,437; void ballots, 3,574; Liberal Union, 300,941; Republican Union, 62,503; Popular party, 194,244; Free Opinion party, 151,002; Communists, 40,988; Agrarians, 26,881; and independent and minor groups, 184,876.

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On this basis, the following quotas of deputies were declared elected: I. *Venizelist Republican Group*: Liberal Union, 106 seats; Republican Union, 18 seats; Independent Liberal Republicans, 20 seats; total seats, 144. II. *Anti-Venezelist Royalist Group*: Popular Royalists, 63 seats; Free Opinion Moderate Royalists, 54 seats; Independent Royalists, 13 seats; total seats, 130. III. *Communists*, 9 seats; *Agrarians*, 3 seats; total seats, 12.

It will be seen that neither of the major groups could form a government that would command a majority in the Chamber. Assuming that the Republican group, with its 144 votes, had formed a cabinet, it would have been required to deduct from its numbers the 12 portfolio-holding deputies, who cannot take part in any vote involving an expression of confidence in the government. The Communist-Agrarian combination might conceivably come to the rescue of the Republicans on a question involving the régime, as no one could expect them to vote for royalty. But outside of this issue, no bourgeois cabinet could rely on a solid and constant support from the Communists. Naturally, the same would apply to the Royalist group. Thus, the formation of a homogeneous party cabinet of either alignment being impossible, a coalition of Republicans and Royalists formed the cabinet that was sworn in on December 5.

The method by which the 286 seats in the Chamber were divided among the winners was ingenious and complicated. The citizen was instructed to vote either for a party list or for an individual independent candidate running on his own list. The voter could express his individual opinion for a given candidate on a party list, his expression, however, being limited to one name in every five of the list. Whenever the list contained the names of five candidates, the voter was to mark only one; should the list contain ten names, he might mark two names, and no more. Whenever the voter preferred to vote for an individual candidate running independently, he could not vote for another list.

The division of seats among the winners was as follows. The total number of votes cast in a given electoral district was divided by the number of seats allotted to that district, plus one. The quotient, exclusive of the remainder, was known as the *basic electoral figure*. The total vote cast for a party list, or an individual independent candidate, was then divided by this basic electoral figure, or quotient, and each list secured seats in proportion to the number of times the basic electoral figure was contained in the total vote of that list. An independent

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candidate running alone, and receiving enough votes to equal or surpass the basic figure, was declared elected on the first allotment.

To illustrate, let us assume that in an electoral district electing eight deputies, a total vote of 25,350 was cast for all lists. Of these, List A received 9,250 votes; List B received 6,625; List C received 6,225; List D received 1,750; and a lone independent candidate running on List E, received 1,500 votes. The total of 25,350 was divided by the number of seats plus one, i.e., nine, giving 2,816 as the basic electoral figure for the district.

The number of votes cast for every list in the district divided by this electoral figure worked out as follows: List A, three seats, with a remainder of 2,802 votes; List B, two seats, with a remainder of 993 votes; List C, two seats, with a remainder of 593 votes; List D, no seat, but only a remainder of 1,750 votes; and List E, no seat, but only a remainder of 1,500 votes. On the first allotment, therefore, our district received seven out of the eight seats to which it was entitled, while the eighth seat remained to be disposed of on the second allotment.

For purposes of the second allotment, the country was divided into nine large electoral areas, each comprising from four to six electoral districts; and in each a larger commission on elections received all the remainders of the electoral districts and allotted the seats that were left, in accordance with the voting strength of the various lists for the entire electoral area. In this second contest only those party lists had part that had secured at least one seat in the first allotment, or, failing that, those that had received at least one-tenth of the total vote cast in a particular district. The remainders of independent candidates were not taken into account. Assuming the seats to be distributed at the second allotment in a particular electoral area containing four districts to be four in number, the first step was to add together all the remainders of all party lists in the districts composing the area. This done, the total remainder vote was divided by the number of seats yet to be filled, and the resulting quotient, irrespective of remainder, became the basic electoral figure of the electoral area. Thereupon the remainders of all the lists of the same party in the four districts of the electoral area were added together, and the resulting total of remainders of the same party was divided by the basic electoral figure of the electoral area; and each party received additional seats, on the electoral area basis, in accordance with the quotients obtained. Parties unable to equal the basic figure received no seat, but left their remainders with the commissioners of the electoral area.

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Following this procedure, the nine electoral areas in the country sent their remainders to the supreme electoral college at Athens for the third and final allotment of seats. In order to be considered for positions in this third allotment, a party must have polled at least ten per cent of the total vote cast throughout the country, or to have secured at least twenty-four seats in the first two allotments. The process of the final allotment was the same as before, the total remainders of the nine electoral areas being added together, and then divided by the number of seats to be allotted, the resulting quotient becoming the basic figure, and the seats being assigned to the parties in whose vote the basic figure was contained once, or twice, or as many times as the case might be. Out of a total of 286 seats, 212 were filled at the first allotment, 65 at the second, and 9 at the third.

Such conclusions as can be drawn concerning the experiment are partly favorable and partly otherwise. In behalf of the plan it may be said (1) that it worked smoothly and efficiently, there being no confusion, and only a minimum of void ballots, about four in a thousand; (2) that the large parties with a history and a tradition stood their ground well, and saw all of their important leaders successful in one of the three allotments; and (3) that independent candidates who made a strong appeal to the voters had no difficulty in securing election. On the other hand, the plan (1) has made it impossible for any one of the large parties to assume the burden and responsibility of forming a strong government, such as the country needs today; (2) has therefore forced on the country a coalition cabinet, based on a series of compromises between the extreme groups, with the result that each of them has had to give up the most important part of its particular program for the sake of harmony; (3) by the same token, has neutralized all effective parliamentary opposition; and (4) has prevented the people of many localities from electing their favorites, and has, in many instances, given the election the character of a mere lottery, also reducing the individual responsibility of the party leaders, and is likely to intensify the system of political bargainings among the smaller groups, whose importance is, at times, increased out of all proportion to their numerical strength.

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NOTES ON INTERNATIONAL AFFAIRS

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The Allocation of Expenses in International Organization. Problems of financing international organizations have become more troublesome as coöperative enterprises have developed wider aims and more complicated machinery. Diplomacy, the most rudimentary form of international organization, creates no general problem because the expenses incurred are solely a matter of national concern. Similarly, the international conference as a medium for concerted action is operated on the plan of each participating state maintaining its own delegation, general facilities, such as quarters for meetings, being supplied by the inviting state. It is only when an international organization requires separate machinery whose expenses are continuous that questions of adequate sources of revenue become pressing, and even then the problem presented is not a difficult one unless the volume of annual expenditures is large.

The budgets of existing public agencies vary considerably in size. When the functions are diverse and a large personnel is necessary the expense account is apt to be correspondingly high. The following figures, representing the expenditures for 1922 of several of the most important organizations, are typical of the wide range ordinarily covered:

Public International Unions:[1]

South American Postal Union	20,000	gold francs
International Council for Exploration of the Sea	151,112	" "
International Union of Railway Freight Transportation	160,000	" "
International Hydrographic Bureau	250,000	" "
International Bureau of Weights and Measures	256,000	" "
Universal Postal Union	280,301	" "
International Bureau for the Publication of Customs Tariffs	341,711	" "
Union of American Republics	1,061,900	" "
International Institute of Agriculture	2,800,000	" "

[1] *Handbook of International Organizations* (published by the League of Nations, Geneva, 1923), pp. 91, 135, 63, 56, 137, 144, 62, 110, 64.

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Other International Organizations:[2]

Permanent Court of Arbitration.....	268,702 gold francs
League of Nations (including the International Labor Organization and the Permanent Court of International Justice).....20,873,945	" "

The expenditures of the League have not fluctuated appreciably since its organization. For the six-year period 1921–27 the total authorized budgets amounted to 136,619,848 gold francs, an average of 22,769,975 gold francs per year.[3] From that aggregate sum the regular current expenses of the League, the Labor Organization, and the Permanent Court of International Justice have been met; while 8,077,311 francs have been used for capital expenditure and approximately 6,000,000 francs put into a working capital fund.[4] The budgets of the International Public Unions and the Permanent Court of Arbitration are intended to provide for the maintenance of the bureaus that have been established to take care of the routine work. On account of the constant nature of such costs, a fixed amount has often been placed in the convention of the union, which can be altered only by the process of amendment. For instance, the annual expenditure of the International Union of Railway Freight Transportation is placed at 160,000 francs, and that of the International Hydrographic Bureau at 250,000 francs.[5] Most of the unions have found, however, that with a general rise of prices, such sums must be revised periodically.

The sources of revenue upon which existing international organizations rely are quite limited. In a few instances some income is obtained from payments made by persons who are served. The International Institute of Agriculture receives a considerable amount annually from the sale of its publications, and the Pan American Union for the Protection of Trade Marks charges fifty dollars for each trade mark registered.[6] The European Danube Commission is given the power to levy such dues as are necessary to pay its expenses.[7] Rarely does it

[2] Report Submitted by the Fourth Committee and Adopted by the Second Assembly on Questions of Finance, Nov. 15, 1921. Also, *Handbook of International Organizations*, as cited (1923), p. 57.

[3] Sir Herbert Ames "Financial Administration and Apportionment of Expenses of the League," published by the Information Section of the Secretariat (1923), p. 18; also, Budget for the Eighth Annual Period, Adopted by the Sixth Assembly on Sept. 26, 1925.

[4] Ames, as cited, p. 19; also Budget for the Eighth Annual Period, as cited, p. 2.

[5] *Handbook of International Organizations*, pp. 56, 135.

[6] *Ibid.*, pp. 110 138.

[7] F. B. Sayre, *Experiments in International Administration* (1919), pp. 40, 44.

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happen that this source of income is available, and in any case the amount received is ordinarily too small to meet any considerable share of the total financial needs, except in the case of a few international public unions with powers of control over local situations.

Private donations constitute another channel by which agencies of internationalism may be afforded means of subsistence, though the amounts derived have never been large enough to provide full support. The Pan American building at Washington was donated by Mr. Andrew Carnegie at a cost of approximately $750,000, and the Hague Peace Palace, which houses the Permanent Court of Arbitration and the Permanent Court of International Justice, was built by the same donor. There is no organization whose current expenses are met either in whole or in any large part by gifts, but it is interesting to observe that one of the judges of the Permanent Court of International Justice suggests that the work performed by that agency would be facilitated if endowment were provided and complete financial independence of the League secured.[8] If the idea of endowment were to be followed up, the gift should come either from many individuals or from the entire group of participating nations in order to avoid national control of an instrumentality expected to act impartially.

By far the most common method of financing international organizations is through the contributions of member states, either on the basis of equality or according to some agreed proportion. The current expenses of the League of Nations, including those of the International Labor Organization and the Permanent Court of International Justice, are provided for in this way, as well as those of nearly all public unions. In most instances there is no evident dissatisfaction with the idea, and it gives promise of indefinite application.

Little fault, indeed, is to be found with the system of annual contributions by participating members, except that it raises a difficult problem as to a suitable means of allocation. Both theoretical and practical issues are involved. Equal assessments tend to imply equal rights in the management of the organization, such as voting power and representation on committees, whereas practice has been gravitating in the opposite direction. The League of Nations, with its Council of large states, draws a distinction between the rights of its members. Many international public unions have given preferential treatment to large states by allowing them more votes than are allotted to the smaller members. For example, both the Universal Postal Union and the

[8] Bustamante, *The World Court* (1925), pp. 174–176.

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International Telegraph Union permit the colonies of large nations to vote, while the International Sanitary Convention and the International Institute of Agriculture divide their members into six and five classes, respectively, and allow different voting power to each class.[9] It is possible to have equality of contributions and inequality of power, but small states are likely to object, particularly if the financial burden placed upon them by such an arrangement is onerous. Where the budget is small, the whole question of a fair system of allocation may fade into the background, but if expenditures run to several million francs annually the matter becomes important. A state like China, with its large outstanding indebtedness and its internal disintegration, will find a few thousand francs more than it can pay. The dependence of international agencies upon payments from poverty-stricken states not only provides the states with a motive for remaining outside but also jeopardizes the financial status of the organizations themselves.

In practice, the problem of apportioning expenses among members has been met in a variety of ways. Most of the international public unions have provided for unequal payments, differentiating among states on the basis of some unit of measurement such as population or railway mileage, though in a few instances the method of equal quotas is used. Following the latter plan was the International Sugar Union before it became defunct.[10] Today this system of allocation is represented by the International Bureau for the Control of the Liquor Traffic in Africa and the Central Bureau for the Map of the World.[11] The Universal Postal Union developed a plan, which has since been widely copied, of dividing member states into classes and assigning to each a number of expense units in such a way that a given state's share of the annual expenditure is proportionate to the ratio between the number of units assigned it and the total number of units. The classification of the eighty-one members is as follows[12]:

Class 1	—	25	units of expense	—	15 states
Class 2	—	20	" " "	—	2 "
Class 3	—	15	" " "	—	17 "
Class 4	—	10	" " "	—	7 "
Class 5	—	5	" " "	—	9 "
Class 6	—	3	" " "	—	22 "
Class 7	—	7	" " "	—	9 "

[9] F. B. Sayre, *op. cit.*, pp. 23–24, 30–31, 163–164.
[10] P. Reinsch, *Public International Unions* (1911), pp. 162–164.
[11] *Handbook of International Organizations*, pp. 54, 55, 137.
[12] *Ibid.*, p. 64.

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A state is placed in one of the seven categories according to population, extent of territory, and the importance of the postal traffic. The International Institute of Agriculture divides its adherents into five classes, while the International Bureau of Commercial Statistics has six.[13] In some instances a state's voting power also is fixed by the classification scheme. The International Sanitary Convention is of this type, with the following arrangement[14]:

Class	1	—25	units	of	expense—	6 votes
"	2	—20	"	"	—5	"
"	3	—15	"	"	—4	"
"	4	—10	"	"	—3	"
"	5	— 5	"	"	—2	"
"	6	— 3	"	"	—1	"

The question of apportioning expenses has been particularly puzzling for the League of Nations. It has, in fact, been the outstanding financial problem that the organization has faced. The fundamental difficulties have centered about the large volume of annual expenditures coupled with the financial weakness of many of the member states. An injustice might be tolerated in the apportionment schemes of the international public unions, because the cost to an individual member is almost negligible; but in the League the smallest allotment is 24,233 francs.[15] During the past seven years there has been much experimentation which has served to bring out more clearly than ever the seriousness of the whole question of dividing expenses in an international organization. But there is no assurance that the problem has been solved. The first system used by the League was provided by Article 6 of the Covenant, which stated that expenses should be borne "in accordance with the apportionment of expenses of the International Bureau of the Universal Postal Union." In the light of previous experience, this arrangement was entirely natural, for it had already been adopted by several public international unions and by the Permanent Court of Arbitration. But, as will presently appear, it left out of account some facts of momentous importance regarding the comparative ability of members to contribute.

In October, 1919, the secretary-general of the League made an apportionment of approximately six million gold francs, which had been approved for the organization period, using the method prescribed by

[13] *Handbook of International Organizations*, pp. 64, 110.

[14] F. B. Sayre, *op. cit.*, p. 164.

[15] Memorandum by the Secretary General published at Geneva on Sept. 4, 1925, regarding the Financial Position of the League on August 31, 1925, p. 4.

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Article 6.[16] The eleven states placed in Class 1 included Great Britain, Australia, India, Canada, South Africa, China, France, Italy, Japan, Poland, and the United States. Several injustices attended the arrangement. The emphasis upon extent of territory and population under the Postal Union system employed brought among the heaviest contributors Poland, China, Australia, and India, states obviously not foremost in the matter of opulence.[17] All along the line were similar misfits, due to the absence of any consideration or measurement of the general economic and financial status of the League's members. Moreover, the scale applied had no classification for new states, as Czechoslovakia, Jugoslavia, Poland, and Hedjaz, so that arbitrary groupings had to be made with as much respect as possible for the basic principles applied under the Postal system.

The history of the League's finances since the first allocation is a story of new endeavors to find a way out of the difficulties presented by the original apportionment. A committee of experts, known as the "Brussels Committee," was appointed in 1920 by the Economic and Financial Organization of the League, to work on the problem.[18] On the basis of its report, the Assembly in November of the same year asked the Council to appoint a committee of five, which has been known as the "Allocation Committee," to make an exhaustive study of the whole question. That committee, under the chairmanship of M. Reveillaud of France, is still at work.

One important result of experiments and investigations was the amendment of Article 6 of the Covenant. The only alternative would have been a change in the allocation system of the Postal Union, which under its rules would entail a delay of a year or eighteen months, and in addition would necessitate the League's meddling with the affairs of an independent organization. By August 13, 1924, the amendment had been ratified widely enough to come into force. It provides that "the expenses of the League shall be borne by the members of the League in the proportion decided by the Assembly." An annex to the Covenant in the meantime made possible for 1923 and 1924 temporary readjustments of the schedules until the amendment should be finally ratified.

It having been conceded that the Postal Union system is inapplicable to the League's finances, there has been general agreement that the only

[16] Sir Herbert Ames, "Financial Administration and Apportionment of Expenses" (cited above), p. 25.

[17] *Ibid.*, p. 30.

[18] *Ibid.*, p. 33.

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standard that can justly be used is ability to pay. Reliable indices of that ability, however, have been difficult to find. The problem was accentuated in the immediate post-war period by the lack of a great deal of essential data, and by shifts in territory, by war debts, and by devastated areas, which detracted from the value of most pre-war statistics. The figures showing the pre-war national wealth of France, for example, had small value after the ruin of her northern regions on the one hand and the incorporation of Alsace-Lorraine on the other.

The first scale of allotment that deviated from the Postal Union system took into account the two factors of net public revenue in 1913 and estimated population in 1919.[19] In order not to apportion too large a share of the expenses to heavily populated countries like China and India, whose financial position is not well indicated by the number of inhabitants, it was provided that the coëfficient of the population of any state should in no case be estimated as exceeding five per cent of the total population of the members of the League.[20]

This new basis of allocation was put into operation for the fiscal year beginning January 1, 1922, in accordance with the provisional article inserted as an annex to the Covenant, and it was continued until the fiscal year 1924.[21] For 1922 states were arranged into seven categories as before, but with a different number of units of expense assigned to each, as follows[22]: Class 1, 90 units of expense; Class 2, 60 units; Class 3, 35 units; Class 4, 15 units; Class 5, 10 units; Class 6, 5 units; and Class 7, 2 units. On this scale the maximum payment was forty-five times greater than the minimum, whereas the old system had permitted a proportion of only twenty-five to one. This wider distribution meant that the contributions of states would have a greater range of differentiation and that the burden of expenses would be shifted toward the strong states for the relief of the weaker ones. France and Great Britain were the only states assigned the maximum amounts, and China, Italy, India, and Japan stood alone in the second category. For the fiscal year 1923, it was decided to abolish the seven categories entirely, and units were assigned between the ranges of one and ninety-five.

[19] Report Submitted by the Fourth Committee and Adopted by the Second Assembly on Questions of Finance, Nov. 15, 1921, p. 41. The substance of the report came originally from the Allocation Committee.

[20] *Ibid.*, p. 41.

[21] Sir Herbert Ames, *op. cit.* (1923), pp. 37–40.

[22] Report of the Fourth Committee, Adopted by the Second Assembly on Questions of Finance, Nov. 15, 1921, pp. 47–48.

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The chief difficulty encountered during this two-year period through the use of revenue figures of 1913 and population estimates of 1919 was that larger quotas were imposed on many states than they appeared able to raise. On August 31, 1924, a total of 4,710,381.15 gold francs remained unpaid for the first five financial periods of the League, i.e., up to December 31, 1923, the principal delinquents being China, Peru, and Rumania. There were many applications for reductions in unit assignments, and in 1923 several alterations were actually made. The quotas of Bulgaria and Uruguay, for instance, were changed from ten to seven.[23]

In accordance with a recommendation of the Allocation Committee made public in June, 1923, it was agreed to try to determine ability to pay by examining the expenditure side of national budgets.[24] It was thought that abnormal factors could readily be eliminated and that significant comparisons could be made of such items of expenditure as defense, general administration, public works, and pensions. Since January, 1924, therefore, this new basis for the division of expenses has been in operation, and annual scales of allocation have been made in conformity with it. The present arrangement was adopted by the Assembly in September, 1925, and is intended for the years 1926, 1927, and 1928. The 937 units have the following distribution:[25]

Great Britain	105	Siam	9
France	79	Austria	8
Italy	60	Hungary	8
Japan	60	Greece	7
India	56	Uruguay	7
China	46	Colombia	6
Spain	40	Portugal	6
Canada	35	Bulgaria	5
Poland	32	Persia	5
Argentina	29	Venezuela	5
Brazil	29	Bolivia	4
Czechoslovakia	29	Esthonia	4
Australia	27	Lithuania	4
Netherlands	23	Latvia	3

[23] Report presented to the Assembly by the Fourth Committee of the League on Sept. 28, 1923, entitled "Allocation of Expenses," p. 4.

[24] Report of the Fourth Committee of the League to the Sixth Assembly on Sept. 24, 1925, entitled "Allocation of Expenses," p. 1.

[25] *Ibid.*, p. 3.

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Rumania	22	Ethiopia	2
Jugoslavia	20	Albania	1
Belgium	18	Dominican Republic	1
Sweden	18	Costa Rica	1
Switzerland	17	Guatemala	1
South Africa	15	Haiti	1
Chile	14	Honduras	1
Denmark	12	Liberia	1
Finland	10	Nicaragua	1
Irish Free State	10	Panama	1
New Zealand	10	Paraguay	1
Cuba	9	Salvador	1
Norway	9	Luxemburg	1
Peru	9		

It is not claimed that this distribution, or even the principle on which it is founded, is entirely satisfactory. In presenting his report to the Fourth Committee of the League in 1925 M. Reveillaud made it clear that the system has many defects.[26] By August 31, 1926, the total amount of payments in arrears had increased to 5,771,096.91 gold francs, a fact which, in a measure, is further indicative of the inadequacy of the arrangement.[27] Changes have been necessary in unit assignments in order to relieve some states from excessive strain. Persia received a reduction from ten to six units in 1924 and from six to five in 1925.[28] China, in arrears to the extent of 3,725,741.89 gold francs, submitted a memorandum on September 1, 1924, asking for a reduction of her quota by approximately fifty per cent, but making it clear that the request was based solely upon grounds of financial disability.[29] As a result, her unit assignment was changed, first from sixty-five to fifty, and later to forty-six.

The League of Nations has manifestly met with more difficult problems of financing than have other forms of international organization, the main reasons being the large annual expenditures which the League

[26] Report . . . to the Sixth Assembly (as cited), p. 2.

[27] Memorandum of the Secretary General of the League, entitled "The Financial Position on August 31, 1925," p. 8.

[28] Resolution proposed by the Fourth Committee and adopted by the Assembly on Sept. 26, 1925, entitled "Allocation of Expenses," p. 1.

[29] *Memorandum Submitted by the Chinese Delegation on Behalf of its Government with Regard to the Reduction of the Proportion of Expenses Allotted China from Sixty-five to Thirty-five Units.*

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incurs and the poverty of many states since the World War. The Allocation Committee is still at work, and it is to be hoped that a more adequate plan will ultimately be found, one capable, perhaps, of being employed for all public international agencies. No scheme will prove entirely workable unless it is both sound in principle and acceptable to the weak state; indeed, a real solution may prove impossible until the financial condition of weak states has been materially improved.

NORMAN L. HILL.

University of Nebraska.

The League of Nations a Rudimentary Superstate. In the November number of the REVIEW Professor Dayton Voorhees maintains that the League of Nations is a corporation, and not a superstate. The term "superstate" has no authoritative definition, and it is perfectly possible to give it a meaning which would exclude the League of Nations. The League is a very interesting political development. Practically, it is of tremendous size and importance. As a political organization, however, it is of the most rudimentary character. If the United States is taken as an example of a complete and perfect superstate, it is obvious that the relation of the members of the League of Nations to the League is quite different from that of the states to the United States. In biology, however, we have all forms of life from the amoeba to the vertebrate, and in the lower forms of life it is often difficult to tell whether a particular microbe should be classified as an animal or a vegetable. The term "superstate" in itself indicates merely that there is an organization, of which a state is a member, which is superior to the members themselves. It is submitted that under this definition of the term the League of Nations is a superstate, though a rudimentary one. A complete superstate has legislative, executive, and judicial organs to make, to execute, and to interpret its laws. The essence of the superstate, however, is that its members are subject to the control of its laws. Are the members of the League of Nations, then, subject to the control of any law of the League?

As to this there can be but one answer. Prior to the organization of the League of Nations, no independent nation admitted the right of any other nation or group of nations to control its absolute freedom of action. What was called international law consisted of certain customs, more or less commonly observed, and certain opinions of jurists as to what nations ought to do. The decisions of courts on international questions were merely decisions as to the municipal law of the juris-

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diction. This state of things was clearly recognized by all courts and by all writers with any pretense to realism. As a result, we have had a book on "The Lawless Law of Nations," by Professor Sterling Edmond, and another on "International Anarchy," by Mr. G. Lowes Dickinson; and the phrase "the law of the jungle" was freely used by other writers. This so-called "international law" was not law in any sense of the term, first, because it lacked any sanction, which to every lawyer is the essence of law; and, second, because it lacked any uniformity or certainty, which are essentials to the most academic idea of law. If two nations disagreed as to any question of international law, there was no means of determining which of them was right. They might go to war, but the result of the ordeal of battle can hardly be recognized as a legal decision. They might submit to arbitration, but the award of an arbitrator merely settles the controversy. It is not like the decision of a court which settles a rule of law. Now, in forming the League of Nations, the framers of the Covenant undertook to subject all the members of the League to a régime of law in the true sense. All members of the League are bound to obey the law of the League. For the first time in history, an authoritative tribunal is established with power to determine what the law, i.e., of the League, is in a particular case. On its legislative and executive side the League is quite imperfectly developed. Only its judicial organization, the Permanent Court of International Justice, is a fully developed organ of a superstate.

The situation, then, is as follows:

1. All members of the League are bound to obey the law of the League.

2. The League Court is empowered to determine whether or not any member has fulfilled its obligations to another member. It is true that the Court does not have compulsory jurisdiction over all the members of the League, and that the great powers have refused to submit to such compulsory jurisdiction. Such refusal, of course, puts the powers refusing in the position of a privileged class of members, but does not alter the essential constitution of the League. The whole theory of the League Covenant is that members are to submit to the law of the League as interpreted by the Permanent Court of International Justice.

3. The members of the League, by joining the organization, recognized that they are subject to a régime of law, and thereby abandoned their claims of sovereign right to make war at their own pleasure. For any member to make war in disregard of the League Covenant is to violate the law of the League. In a complete and perfect superstate there would, of course, be an executive charged with the duty of enforcing

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its laws. This executive in the League of Nations is lacking. The duty of enforcing the laws of the League is left to the individual members. To what extent the Council may determine the duties of each member in this regard has been a matter of dispute, but the members clearly have the right, and also the duty, to enforce the laws of the League by punishing the violation thereof. We have, then, in the law of the League all the elements of true law: uniformity and certainty provided by the League Court; sanctions provided by the League members individually. There is an obvious lack of executive authority. We experimented with a rudimentary superstate in 1778 under the Articles of Confederation. The lack of executive authority in this organization rendered it unsatisfactory, and caused the creation of a complete superstate under our present constitution in 1789.

4. On the legislative side, the organization of the League is also rudimentary. There is legislative power in the Assembly and in the Council. The requirement of the unanimous vote of those present at a meeting merely hampers the exercise of this legislative power. There is a further legislative power in the members of the League to amend the League Covenant. It is true that a member dissatisfied with the amendment may withdraw from the League, but such right of withdrawal does not affect the question in the least. None of the eminent lawyers who argued that the southern states in 1861 had a right to secede from the Union ever even suggested that the right of secession so claimed prevented the United States from being a superstate prior to the secession. What the League Covenant shows is that while the members are willing to submit to a régime of law, that law is to be practically as unchangeable as the laws of the Medes and Persians. It is, of course, an inherent weakness in a political organization not to have adequate provision for changing law to meet changes in circumstances. But the framers of the League Covenant preferred to accept this rigidity rather than to submit to changes in the law by a regular legislative body.

Whether one's definition of a superstate is made broad enough to include the League of Nations is not, perhaps, of great importance. What is important is to recognize that for the first time in history we have nations submitting themselves to a régime of law, the law of a superior organization. The uniformity and certainty of this law are to be provided by means of the League Court, i.e., the Permanent Court of International Justice. The sanctions of this law are to be provided by the members of the League. There is no central executive to enforce this law, and there are no adequate provisions for

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legislative changes in the law from time to time. The writer, therefore, is disposed to call the League of Nations a rudimentary superstate. The matter of present emphasis is, however, that the establishment of a régime of law for the government of nations is one of the most important events in all history. The result of the League Covenant is a question of law; the definition of the League as a superstate or a corporation is a mere question of terminology; while the attitude of the United States toward the League is only a question of American foreign policy.

EDWARD A. HARRIMAN.

Washington, D. C.

Responsibility for Violation of International Law. From the point of view of political science, a very interesting decision was handed down last November by the Greek Supreme Council of Inquiry before which General Theodore Pangalos, revolutionary dictator from June, 1925, to August 22, 1926, and his colleagues were being tried. It is not remarkable that a form of judicial procedure should be organized to determine the responsibility of those who have seized the power of the state and eventually lost their hold on the government. Violation of the national form of government has been a common charge against those brought to trial by the state. International acts which have injuriously affected the state have not infrequently been the subject of state trials. Even violation of international law as a body of standards has often enough been charged against political persons brought to trial. But the Greek Supreme Council of Inquiry went farther than that and found General Pangalos guilty of violating Article 12 of the Covenant of the League of Nations while he was in power. The decree says on this point:[30]

"Whereas the Covenant of the League of Nations included in the treaty with Bulgaria signed November 14–17, 1919, at Neuilly by Greece, as well as in the treaties of Versailles and of Saint-Germain, which have been ratified, establishes bonds of self-restraint for the sovereign states which have become members of the League and creates for them both rights and duties, that is to say, juridical bonds of an international order, which must be respected by the governments of the members of the League in order to attain the general purpose of the society, which is the development of coöperation between states and the guaranty of their security and their peace;

"Whereas Art. 12 of the Covenant provides that all the members of the League agree that, if there should arise between them any dispute likely to lead to a rupture,

[30] The Greek text is not available. The translation is from a French text (*Le Temps*, November 14, 1926).

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they will submit it either to the procedure of arbitration or to examination by the Council, and that in no case will they resort to war before the expiration of a period of three months after the award of the arbitrators or the report of the Council;

"Whereas after that, and as stated in the communication of the president of the Council, the ministers against whom the complaint is brought gave orders for military operations and an invasion of Bulgarian territory without complying with the clause above mentioned, and thereby provoked a decision of the League of Nations obliging the Greek state to pay an indemnity of 30,000,000 leva, which was turned over to Bulgaria;

"There exists on the basis of these facts a case of violation by the said ministers of the law on the responsibility of ministers, and it is consequently incumbent to order an inquiry as to that act."

The normal law on the responsibility of ministers, whether a constitutional or a statutory enactment, necessarily takes cognizance of duties pertaining to international affairs. In practically all states clear provisions exist establishing treaty engagements either as the law of the land or as binding obligations upon the executive government. There are frequent instances of a state being found wrong by an international tribunal in its contentions as to its duties under a treaty, and of such a state recognizing the error municipally by appropriations of indemnification or otherwise. But, just as international relations in the past have overwhelmingly been based on political considerations, so has the recognition of treaty obligations been interpreted according to the internal exigencies of the moment. It was always simple to bring the makeweights of extraneous circumstances to bear upon the interpretation of bipartite treaties.

The tenets of international law, while numerous enough, for the most part are obvious rules of action, while many of them are in the nature of traffic regulations, the importance of having a rule being greater than its exact nature. If one examines the multipartite treaties which exist, one is impressed by the great extent to which they partake of this character. The betterment resulting from them is explained by the fact that they reaffirmed and consolidated practice rather than from any conscious imparting of a higher legal standard. The Hague conventions unified rather than advanced standards. Such a convention as that on contract debts recorded a standard already beyond the contentious stage. These are the processes of inchoate codification. Their value is the establishment of definite standards in lieu of indefinite standards; and definite standards inevitably become the starting point for the further and more advanced crystallization of opinion which precedes the acceptance of more extensive engagements.

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The negotiation of the Covenant of the League of Nations went beyond the process of mere recording. The World War was fought by states which regarded themselves as absolutely independent entities, obligated to nothing beyond their own wills. A concession granted to another state was not in reality accorded for any other reason than the advantage of the grantor, even though published statements made it appear that the act was inspired by a sense of justice. The carefully elaborated machinery for denunciation of treaties is a sufficient evidence that the concessions contained in them were always liable to be withdrawn whenever interest suggested such a course as advantageous. The exceptions in pre-war treaties will usually be found to have had their origin in some form of duress.

Only the state in its international aspect retained this attribute of extreme independence. In all informal international relations the state, and particularly the people who constituted it, proceeded on the reality of modern society, increasing interdependence. Internally, of course, all states had very extensively implemented that interdependence. The World War illuminated the reality of interdependence as by a flash of lightning. The influences which led to the appointment by the preliminary peace conference of the League of Nations Commission, and which dominated the elaboration of the Covenant, were directly based upon the conviction that the reality of interdependence must be implemented.

It followed that the making of the Covenant proceeded under auspices different from those controlling the negotiations for current peace which were simultaneous with it. The making of the peace treaties could not in actuality be unaffected by the opportunity to benefit from the duress which victors could apply to the vanquished. Moreover, the mere appreciation of their advantageous position offered a rare opportunity to reward the victor's self-appraised virtue and to punish the wickedness of the vanquished, self-convicted of guilt by the mere fact of defeat, according to classical standards of military theory. Such considerations did not preside at the making of the Covenant, though doubtless they affected it in detail, as in the exclusion of the "untrustworthy" vanquished states from original membership. The interdependence of states as demonstrated by the World War and the lack of current advantages to be gained were the conceptions which had the greatest effect in giving the Covenant its form. No state could assert an intention of refusing to be bound by what was generally recognized as law. Since

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the application of anything agreed to was to be in the future, none had effective objections to formulas which met the conditions of reason.

The treaty engagements embodied in the Covenant consequently differed from those customarily included in multipartite conventions which, as pointed out, consist of recording or harmonizing practice or give practical form to prior agreement. The Covenant actually set up new standards, putting into operation principles not previously operative in actual international affairs. In so far as the conventional engagements of the Covenant represent sound principles, it was certain from the outset that they would have a fruitful career. Correct ideas corresponding with needs can withstand much buffeting.

But another question remained to which the answer is suggested by the decree of the Greek Supreme Council of Inquiry. Would the principles of the Covenant, dealing with the common concerns of the states, become absorbed by a process of capillary attraction into municipal law, or would they remain a set of rules for application at Geneva only? Further, would the principles adopted internationally modify the former national outlook toward other states, so that state rights would come to be actually conditioned upon and limited by the duties of the state as internationally accepted?

Various contributions to an answer of these questions have been forthcoming. It is, of course, wise to give no more weight to official protestations of devotion to League principles than to pre-war protestations of devotion to right and justice. They make a record which in time sets habit; but profession is far less valuable than performance. The application of the League principles at Geneva, taking all practical considerations into account, leaves little room for criticism of substance. Nationally, the League states have undoubtedly oriented their conduct of foreign affairs to give weight to their League engagements. Now comes a normal Greek government which municipally has determined upon holding ministers responsible for violation of principles adopted by it as one of the standards common to the society of states. It would appear that those standards have thereby been recognized as effectively permeating and modifying the old thesis of the liberty of state action.

The international principle that is thus being nationally enforced is of itself significant with respect to the permeation of the international standard. Article 12 of the Covenant provides, in effect, that no party accepting it shall resort to war before referring its dispute to neutral decision or review. War can arise only from a dispute; but if every

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dispute is to be "left out to men," as the New Englander used to say, the state foregoes its old claim to be judge of its own cause. The Greek action suggests a new phase or factor in the voluntary turning of states toward a policy of obedience to international laws.

DENYS P. MYERS.

World Peace Foundation,
Boston, Mass.

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NEWS AND NOTES

Personal and Miscellaneous

Dr. Walter F. Dodd, formerly of the University of Illinois, and later of the University of Chicago, has been appointed professor of political science and public law at Yale University. He assumed his new position at the middle of the present academic year. Dr. Dodd has been engaged for some time in the practice of law in Chicago.

Professor William S. Carpenter is on leave from Princeton University during the second half-year and is engaged in studies abroad on the principle of representation.

Professor William B. Munro, of Harvard University, delivered four lectures at Cornell University in November on the Jacob Schiff Foundation. The general subject was "Controlling Forces in American Politics."

Professor W. W. Willoughby, of the Johns Hopkins University, has completed a new two-volume edition of his "Foreign Rights and Interests in China" and will be abroad during the second semester. The revised edition will be issued by the Johns Hopkins Press during the spring.

Dr. Leo S. Rowe, director-general of the Pan American Union, delivered addresses in November at Clark University on the development of Pan Americanism and at the Naval War College on the present international situation of the American continent.

Mr. Chester H. Rowell, for many years editor of the Fresno *Republican*, and formerly a member of a number of public administrative bodies, including the United States Shipping Board, has been appointed lecturer in political science at Stanford University. In the present winter term he is giving a course on current international politics.

Professor Alfred Zimmern, director of the Geneva School of International Relations, delivered a series of lectures in December at the University of Cincinnati. He dealt with the post-war institutions for the maintenance of peace, and also with the economic and intellectual relations of peoples.

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Professor Nicholas J. Spykman, of Yale University, has been appointed deputy-director of the Geneva School of International Studies, where he will officiate during the summer sessions, returning to Yale for the regular academic years.

Professor Pitman B. Potter, of the University of Wisconsin, will serve as lecturer in the department of government, University of Texas, for the whole of the summer session of 1927. He will offer courses in international law and international relations.

Professor Albert R. Ellingwood, of Lake Forest College, is serving this year as acting professor of political science at Northwestern University. He has recently published a volume entitled "Government and Labor."

Professor Raymond Moley, of Columbia University, has been serving since June as research director of the New York State Crime Commission.

Dr. Warren Reed West and Dr. John A. Tillema have been promoted to the rank of assistant professor of political science in George Washington University.

Professor William A. Robinson, of Dartmouth College, has been granted sabbatical leave for the second semester of the current academic year and will spend the time in research in Washington.

Mr. D. M. Anracker, formerly of Culver Military Academy, has been appointed instructor in political science, and Mr. Donald L. Stone has been promoted to an assistant professorship, at Dartmouth College.

Dr. J. L. Mecham, who was with the department of history at the University of Texas last year, has become a member of the staff of the department of government.

Mr. Daniel B. Carroll has been advanced from an assistant to an associate professorship at the University of Vermont.

Mr. Francis R. Aumann and Miss Dorothy Schaffter have been appointed graduate assistants in political science at the State University of Iowa.

Miss Mary Z. Johnson, who recently received the doctorate at the University of Chicago, is an instructor in government at Wooster College.

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Dr. Herman C. Beyle is acting as secretary to the chairman of the Social Science Research Council and also conducting courses in political science at the University of Chicago.

Miss Bessie L. Randolph, formerly of Randolph-Macon Woman's College, is now head of a newly created department of political science in the Florida State College for Women. She received her doctorate at Radcliffe College last year.

Professor Walter R. Sharp, of the University of Wisconsin, is on leave of absence during the second semester. He is abroad making a study of phases of public personnel administration in France and Germany.

Colonel A. T. Prescott, dean of administration and head of the department of government at Louisiana State University, has assumed the additional duties of dean of men. Assistant Professor Charles W. Pipkin has been promoted to an associate professorship, Mrs. Harriett M. Daggett has been advanced from fellow to instructor in government, and Mr. Taylor Cole, formerly of the department of government at Texas, has been appointed instructor in government.

The former department of history and political science at the College of the Pacific (Stockton, Cal.) has been divided. Professor Alden H. Abbott, head of the previous joint department, is now head of the department of political science.

Sir Frederick Whyte gave a series of lectures in November at the University of Chicago under the auspices of the Harris Foundation and the William Vaughan Moody Foundation. They dealt with various phases of the recent political life of India.

Research projects now being carried on at the University of Chicago include a study of referendum votes, under the direction of Professor Gosnell; studies in regional planning, under the direction of Professors Merriam and Kerwin; a study of the city manager plan, and the prestige value of public employment, under the direction of Professor White. In coöperation with the Union League Club of Chicago, Professor Kerwin has recently completed a census finding list of civic agencies in Chicago.

The fourth session of the Harris Institute of International Affairs will be held at the University of Chicago during the coming summer.

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The conference will deal with the future organization of the British Empire, and lecturers and consultants from Great Britain, the Irish Free State, Canada, Australia, and other parts of the British Commonwealth of Nations will be invited to attend. In accordance with the usual custom, there will be both a series of open lectures and a series of round table conferences. Inquiries concerning the Institute should be addressed to Professor Quincy Wright, University of Chicago.

Professor C. D. Allin, of the University of Minnesota, will teach at the University of Chicago during the first half of the summer session, giving a course on the British imperial constitution, in connection with the Harris Institute. Professor Robert Michels, of the University of Basle, will also give courses during the first term of the summer session.

The third meeting of the International Congress of Administrative Sciences will be held during the coming June in Paris. This Congress first met in Brussels in 1910, and again in Brussels in 1923; and it plans to meet hereafter at intervals of three years. The sessions are largely attended by leading administrators of all European countries. The meetings are conducted ordinarily in French, but each delegate is allowed to use his own language. It is expected that a number of American administrators and students of administration will attend the Paris meeting. Correspondence concerning the Congress should be addressed to Professor Leonard D. White, University of Chicago.

A conference on international relations and American diplomacy, intended to become an annual event, was held at Louisiana State University on February 3–5. In addition to evening lectures, round tables were conducted on the following subjects: the politics of France and England since 1918 with reference to foreign policy, the financial and economic rehabilitation of Europe since 1918, present-day relations between the United States and Latin American nations, administrative problems of American foreign policy, the church and the problem of peace, the present status of international law, and women and world peace. Round table leaders included Professors R. K. Gooch, of the University of Virginia, J. Fred Rippy, of Duke University, and Caleb P. Patterson, of the University of Texas, and Mrs. P. V. Pennypacker, honorary president of the General Federation of Women's Clubs. Professor Arthur T. Prescott served as chairman of the conference and Professor Charles W. Pipkin as secretary.

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At a meeting of the board of trustees of the China Foundation for the Promotion of Education and Culture, held in Peking in February, 1926, a resolution was passed to establish in the United States a China Institute in America, and the following May the Institute was duly organized, with Dr. P. W. Kuo, organizer and first president of the National Southeastern University, as director, and with offices at 2 West 45th St., New York City. The Institute aims to promote a closer relationship between Chinese and American educational institutions through the exchange of professors and students and to stimulate general interest in America in the study of Chinese culture. Among other activities, the organization undertakes to supply information to individuals and institutions concerning educational, political, and economic conditions in China. It proposes also to build up a reference library on China, to conduct research on problems pertaining to Chinese-American relationships, and to publish reports and bulletins about cultural developments in China and America.

An Institute of International Relations of the Pacific Area was held at Mission Inn, Riverside, California, December 5–12. It represented the first coastwide attempt to deal comprehensively with a group of international subjects, and was the initial meeting of a conference planned to serve the Pacific Coast area very much as the Williamstown Institute serves the eastern parts of the country. Occupying a position mid-way between the Institute of Politics at Williamstown and the Pan-Pacific Conferences at Honolulu, the Riverside Conference in a sense enters a virgin field, and will serve a clientele not privileged to attend the other institutes. The program for 1926 emphasized the problems of the Pacific basin. The work of the Conference was divided into special lectures, general conferences, and daily round tables. Special lectures were as follows: Mexico, by Professor H. I. Priestley, of the University of California; the Tacna-Arica dispute, by Professor Graham H. Stuart, Stanford University; the League of Nations and economic readjustments, by Dr. Charles E. Martin, University of Washington; immigration, by Paul Scharrenberg, California Federation of Labor; Pacific-Asia, by J. Merle Davis, of the Pacific Institute, Honolulu, and Dr. Herbert Gowen, University of Washington; world coöperation, by Paul Harvey; food supply and population, by Professors T. F. Hunt, University of California and R. D. McKenzie, University of Washington. The round-table topics and leaders were: over-population in the Orient, Professor McKenzie; Pan-Americanism, Professor

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Priestley; limitation of armaments, Professor Harley, of the University of Southern California; missionary effort, President Coleman, of Reed College; Chinese nationalism, Professor Gowen; the League of Nations, Professor Graham H. Stuart; the Permanent Court of International Justice, Dr. Martin; world markets, Dr. Gary, of the United States Department of Commerce; and race relations, Professor Mears, of Stanford University. Other institutes have been held on the Pacific Coast, but in the main have been attended by university students and have had only a local interest. The present institute embraced the entire Pacific coast, and was attended mainly by persons of experience and maturity. The Institute will meet annually, and will change its agenda according to the interests and needs of each recurring year.

Annual Meeting of the American Political Science Association. The twenty-second annual meeting of the Association was held at the Hotel Statler, St. Louis, December 28–30, 1926. The registration was 157, as compared with 144 at the New York meeting of 1926, and it was estimated that the number of members in attendance was at least 170. In session at the same time and place were the American Economic Association, the American Statistical Association, the American Farm Economic Association, the American Association of University Instructors in Accounting, the National Association of Teachers of Marketing and Advertising, and the American Sociological Society. The total registration in these organizations was more than 800. A smoker was tendered to the members of the various associations at the City Club of St. Louis.

The program followed the general form of the past two years. As arranged by the program committee, under the chairmanship of Professor F. W. Coker, it was as follows:

TUESDAY, DECEMBER 28

10:00 A. M. **Round Table Meetings.**

1. *The Problems of a Scientific Survey of Criminal Justice*
   Raymond Moley, Columbia University, director
2. *Is It Desirable or Possible to Reorganize Instruction in Political Science upon Functional rather than upon Descriptive Lines?*
   Charles E. Merriam, University of Chicago, director
3. *Research Methods Relating to the Problems of Legislative and Administrative Areas, with Particular Reference to the Question of Federal Centralization*
   Frederic H. Guild, University of Kansas, director

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4. *Scientific Method in the Study of Electoral Problems*
   Victor J. West, Stanford University, director
5. *An Analytical Approach to the Subject of World Politics in Teaching and Research*
   Quincy Wright, University of Chicago, director
6. *Research Problems Relating to Political Opinion*
   Robert D. Leigh, Williams College, director
7. *The Problem of Orientation Courses*
   W. E. Mosher, Syracuse University, director
8. *Problems in the Study and Teaching of Comparative Government*
   Frederic A. Ogg, University of Wisconsin, director

2:00 P. M. **Recent Developments in Political Doctrine**
Presiding officer: Arthur N. Holcombe, Harvard University

Political Science at the Crossroads
Ellen Deborah Ellis, Mt. Holyoke College

The Issue of Judicial Review in Europe Today
Carl J. Friedrich, Lecturer in Government, Harvard University

4:30 P. M. **Meeting of the Executive Council and Board of Editors**

8:00 P. M. **Anti-Parliamentary Movements in Europe**
Presiding officer: Charles A. Beard, New York City

European Dictatorships
Henry R. Spencer, Ohio State University

Recent Anti-Parliamentarism in France
R. K. Gooch, University of Virginia

Discussion: F. A. Middlebush, University of Missouri
Adamantios Th. Polyzoides, Editor of *Atlantis*, New York

WEDNESDAY, DECEMBER 29

10:00 A. M. **Round Table Meetings.** As indicated for Tuesday

12:30 P. M. **Subscription Luncheon**
Presiding officer: Isidor Loeb, Washington University

A Review of the Elections of 1926
James K. Pollock, Jr. University of Michigan
John Dickinson, Harvard University

3:00 P. M. **Governmental Regulation of Private Opinion and Conduct**
Presiding officer: William Anderson, University of Minnesota

The Vanishing Bill of Rights
Forrest R. Black, State University of Iowa

Discussion: Walter J. Shepard, Robert Brookings Graduate School
Robert C. Brooks, Swarthmore College

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6:30 P. M. **Subscription Dinner**

Presiding officer: Hon. Charles Nagel, St. Louis

Time, Technology, and Creative Thought in Political Science
Charles A. Beard, New York City, President of the American Political Science Association

The Problem of Bureaucracy in Government
Hon. Frank O. Lowden, Former Governor of Illinois

THURSDAY, DECEMBER 30

10:00 A. M. **Round Table Meetings.** As indicated for preceding days

12:30 P. M. **Subscription Luncheon**

Presiding Officer: Charles A. Beard, New York City

Experiences of a State Budget Officer
Clyde L. King, University of Pennsylvania

2:15 P. M. **The Relation of Government to Private Property.** Recent Tendencies in Practice and Doctrine. (Joint session with American Association for Labor Legislation)

Presiding Officer: Walter J. Shepard, Robert Brookings Graduate School

The Political Ideas of Contemporary Tory Democracy, with Special Reference to the Theory of Property
Lewis Rockow, Syracuse University

Constitutional Guarantees and Modern Economic Needs
John Maurice Clark, Columbia University

Discussion: Earl Crecraft, University of Akron
Donald R. Richberg, Attorney, Chicago

4:15 P. M. **Annual Business Meeting of the Association**

Presiding Officer: Charles A. Beard, New York City

Annual Reports of the Secretary-Treasurer and of the Managing Editor of the AMERICAN POLITICAL SCIENCE REVIEW. Reports of committees. Election of officers for 1927

Professor John Dickinson was unable to attend the meeting, and his place on the Wednesday luncheon program was taken by Professor Thomas Reed Powell, of the Harvard Law School. Professor Harry Barth, of the University of Oklahoma, took the place of Professor Robert D. Leigh as director of the round table on Research Problems relating to Political Opinion. In the absence of Professor R. C. Brooks, Professor Powell was called upon to discuss Professor F. R. Black's paper, "The Vanishing Bill of Rights."

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The Executive Council and Board of Editors received the report of the Secretary-Treasurer on the membership and finances of the Association. The report may be summarized as follows:

I. MEMBERSHIP

Accessions during the year	124
Resignations and cancellations	103
Net gain in membership	21
Total number of members paying annual dues	1532
Number of life members	54
Total membership	1586

II. FINANCES

1. Balance, December 15, 1925			$ 1,061.26
2. Receipts, December 15, 1925 to December 15, 1926			
Dues for 1924	$ 44.00		
Dues for 1925	272.00		
Dues for 1926	4,419.51		
Dues for 1927	774.50		
Dues for 1928	8.00		
Voluntary contributions by members for support of the REVIEW, 667 at $1.00	667.00		
Sale of publications	445.33		
Advertising	324.10		
Received from National Conference on Science of Politics, printing and reprints	248.99		
Miscellaneous	4.25		
Total receipts			$7,207.68
Total balance and receipts			8,268.94
3. Disbursements, December, 1925, to December, 1926			
Bills paid for 1924			$ 378.82
The George Banta Publishing Co.			
Printing and distributing the REVIEW	$4,152.48		
Reprints, postage, miscellaneous	348.79		
			$4,501.27
Clerical and stenographic assistance, office of secretary-treasurer	345.00		
Clerical and stenographic assistance, office of managing editor	334.25		
M. O. Price, "Recent Publications"	40.00		
C. A. Berdahl, "Recent Publications"	102.35		
Managing editor, fare, Iowa City meeting	63.00		
Postage, office of secretary-treasurer	77.00		
Stationery and printing, etc.	119.20		
Equipment, office secretary-treasurer	38.09		
Exchange subscriptions	6.00		

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Purchase of back numbers	3.21	
Mailing questionnaire, Survey of Research	10.25	
Dues, American Council of Learned Societies	77.50	
Express and hauling	12.23	
Refunds, overpaid subscriptions	3.50	
Rent, deposit box, Ann Arbor Savings Bank	2.00	
		$1,233.58
Total disbursements		6,113.67
Balance, December 15, 1926		2,155.27
Total disbursements and balance		8,268.94

4. Trust fund

City of Madison 5½ per cent special street improvement bonds, purchased Feb. 11, 1924, due April 1, 1927, at $101.80 and accrued interest. Total cost $1,278.38.		
Par value	$1,200.00	
Transferred Bank of Wisconsin (Madison) to Ann Arbor Branch Savings Bank, Feb. 19, 1926	349.72	
Interest on bonds to April 1, 1926	66.00	
Interest on $66, April 1, to December 15, 1926	1.32	
Receipts from life members, 1926	195.00	
Interest on account to July 1, 1926	4.42	
Total (not including interest on bonds since April 1, 1925)	1,816.46	

Estimates presented for the fiscal year 1927 showed a total balance and receipts of $9,347.27, disbursements aggregating $6,238.00, and a balance December 15, 1927, of $3,109.27. This estimate did not take into account any increases of expenditure which might be authorized by the Executive Council.

The treasurer's accounts were audited by a committee consisting of Professors John Alley and T. H. Reed, and were reported correct. The Executive Council authorized the treasurer to make a reasonable expenditure for the installation of a set of books for keeping the accounts of the Association.

Probably the most important action taken at the meeting, from the standpoint of the future of the Association, was the creation of a committee on Association policy by the adoption at the annual business meeting of the following resolution:

"*Resolved*, That the President appoint a special committee on Association policy to survey the problems of research, instruction, and publication in the field of government, with a view to enlarging the activities and increasing the efficiency of the Association in relation to its members and the public; and

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That this committee be authorized to expend not more than $500 from the treasury of the Association for preliminary work, and to obtain from other sources the sum of $12,000 to be used in the employment of a competent director and for other expenses necessary for a thoroughgoing inquiry."

This resolution was proposed by the committee on fiscal policy set up at the New York meeting of 1925 (President Beard, chairman, and Professors Merriam, Ogg, Fairlie, Hayden, and Brooks), and was recommended for adoption by the Executive Council, which had thoroughly discussed the matter at its summer meeting at Iowa City and at two sessions held in St. Louis. The primary purpose of the committee and the director provided is to formulate for the consideration of the Association the sound and comprehensive program of activities upon which any future campaign for an endowment fund must rest.

Professor Frederic A. Ogg was reëlected managing editor of the AMERICAN POLITICAL SCIENCE REVIEW for the ensuing year. All other members of the Board of Editors were likewise reëlected. Professor Ogg reported that in Volume XX (1926) there were 977 pages, distributed as follows: Leading Articles, 297; Legislative Notes and Reviews, 60; American Government and Politics, 19; Foreign Governments and Politics, 45; Municipal Notes, 18; Notes on Judicial Decisions, 48; Notes on International Affairs, 32; News and Notes, 73; Book Reviews, 165; Recent Publications of Political Interest, 148; Reports of Round Table Conferences, 64; List of Doctoral Dissertations, 8; and Volume Index, 21.

Professor Ogg stated that the contract with the George Banta Publishing Company runs for one more year, that it had been financially advantageous to the Association, and that the relations between the Board of Editors and the Company had been highly satisfactory. The cost of publishing the REVIEW was $669.76 less in 1926 than in 1925, although the 1926 volume contained 66 more pages and consisted of an edition of 1900 instead of 1800 copies.

Professor Ogg also reported that the consolidated index for Volumes I to XX of the REVIEW, and all published Proceedings, now being compiled by the Indiana Legislative Bureau and approved by the Council and Board, will probably be completed in the early summer of 1927, and will be brought out as soon as possible thereafter. The Editor believes that the entire cost of printing and distribution will be met by the sale of the Index. He also stated that the compilation would be without cost to the Association, except for necessary expenses in the

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preparation of the manuscript, but expressed the opinion that the services of Miss Jessie Boswell in connection with the compilation should be recognized by a suitable honorarium.

Professors C. E. Merriam and J. P. Chamberlain reported, respectively, as representatives of the Association in the Social Science Research Council and the American Council of Learned Societies. Their reports are printed below.

Upon the recommendation of Professor John A. Fairlie, the Association voted a continuation of its representation on the committee on the proposed Encyclopaedia of the Social Sciences, and appropriated $250.00 as its contribution to the expenses of the committee during the ensuing year. Professor Fairlie reported that excellent progress was being made in procuring funds for the preparation and publication of the encyclopaedia.

Professor Leonard D. White suggested to the Executive Council that the Association might well consider the desirability of awarding annually a prize to the writer of the best doctoral dissertation in the field of political science during the year. Such an award, he stated, should be thought of as a recognition of an outstanding piece of work, not as a prize to be won in competition. The Council authorized the appointment of a committee of three on honors and awards to consider this proposal.

Information having been received that the American Historical Association will meet in Washington, D. C. during the last week of December, 1927, the Executive Council announced that in all probability the Association will meet in Washington next year. Final announcement will be made in the May number of the REVIEW.

Officers were elected for 1927 as follows: President, Professor William B. Munro, Harvard University; First Vice-President, President Arnold B. Hall, University of Oregon; Second Vice-President, Dean Isidor Loeb, Washington University; Third Vice-President, Professor Robert C. Brooks, Swarthmore College. The newly elected members of the Executive Council are: for the term expiring December, 1928 (vacancy caused by the election of President A. B. Hall as First Vice-President), Professor C. P. Patterson, University of Texas; for the term expiring December, 1929, Professors William Anderson, University of Minnesota; Quincy Wright, University of Chicago; Ralph S. Boots, University of Pittsburgh; J. P. Senning, University of Nebraska; and Henry R. Spencer, Ohio State University.

J. R. HAYDEN, *Secretary-Treasurer.*

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Annual Report of the American Council of Learned Societies. The activities of the American Council of Learned Societies (ACLS) fall into two categories, according as they have to do with (1) international coöperation arising chiefly out of the Council's membership in the Union Académique Internationale (UAI) and (2) matters relating to the interests of the societies within the United States.

On the international side it may be noted that the ACLS was represented at the seventh annual meeting of the UAI at Brussels in May, 1926, by Mr. Waldo G. Leland, of the Department of Historical Research of the Carnegie Institution of Washington, and Professor Louis J. Paetow, of the University of California. A summary of the proceedings will appear in the Bulletin of the ACLS for May, 1927. A proposal submitted by the ACLS for a survey of current bibliography covering the field of the UAI was approved within the limits of available resources. The International Institute of Intellectual Coöperation was requested to undertake the correspondence and compilation for countries outside of the American continents and the ACLS for North and South America, and Mr. Leland was chosen to represent the Union in dealings with the Institute and the ACLS. The following minute was unanimously adopted: "The UAI calls attention to the fact that its statutes exclude no nation, but that on the contrary they provide the procedure whereby academies still outside the Union can be admitted to its membership." Mr. Leland reports that this minute was interpreted as an invitation to the Central Powers to apply for admission. Mr. De Sanctis was chosen president of the Union replacing Mr. Homolle, deceased, and Mr. Pottier as vice-president replacing Sir Paul Vinogradoff, deceased.

Activities in America may be listed briefly as follows:

Bulletin. Bulletin 5 of the Council appeared in May, 1926, and Bulletin 6 is planned for May, 1927. It is proposed in the near future to change the Bulletin from an annual to a semi-annual or quarterly publication and to make it a more adequate medium of information regarding research projects actively in progress. Members of the constituent societies can secure copies of the current number of the Bulletin by request addressed to the secretary of the Council.

Conference of Secretaries of the Constituent Societies. The third annual conference of secretaries under the auspices of the ACLS was held in New York on January 28. Professor E. W. Burgess, secretary of the American Sociological Society, was in charge of the arrangements and the docket.

Medieval Studies. Out of the activities of the Committee on Medieval

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Studies the Medieval Academy of America has come into being. It has taken over the work in this field heretofore conducted by the Council, including the bulletin on the progress of medieval studies in the United States.

Dictionary of American Biography. Professor Allen Johnson, formerly of Yale University, assumed his duties as editor on February 1, 1926. The staff as at present organized consists of the editor, four assistants, a secretary, and a stenographer. The list of persons whose biographies will be included is now substantially complete. Writers have been secured for nearly six hundred biographies, chiefly in A and B, and two hundred manuscripts have already been received. Under the terms of the agreement with the New York Times Company, Volume I is to appear before August, 1928. The remaining nineteen volumes are expected to be issued at the rate of three a year. The editorial offices are located in the Hill Building, 17th and I Streets, Washington. The Committee of Management, Dr. J. F. Jameson, chairman, has held three meetings during the year.

Survey of Research. Under a grant from the Carnegie Corporation, the Council is approaching the completion of a survey of research in the humanistic and social sciences. The director of the survey, Professor Frederic A. Ogg, of the University of Wisconsin, devoted his time to the survey from March 1 to September 1, 1926, with headquarters at Washington. He has now returned to his regular duties, but will shortly submit an extensive report setting forth the results of the survey. The executive committee of the Council has authorized the director to distribute to the respective societies the materials which he collected from individual members of the societies regarding research projects, with the suggestion that each society turn over the material to its research committee or some other appropriate agency, with a view to further studies of the present tendencies and prospects of research in the given subject. The report presently to be published will deal principally with the status of humanistic and social research, as compared with research in the natural sciences, in the United States; the universities as research centers; research in the college; learned societies and research; research institutes and bureaus; research work of miscellaneous national and local organizations; private business and research; governmental research; foundations and endowments in relation to research; libraries as aids to research; research fellowships and prizes; and the problem of publication.

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Small Grants in Aid of Research. The committee on aid of research, Dean Guy Stanton Ford, chairman, made its awards for 1926 on March 31 under the annual subvention of $5,000 from the Laura Spelman Rockefeller Memorial. Twenty-one grants, in no case exceeding $300, were distributed to scholars in various parts of the country to assist projects on which they are engaged. The recipients are at present reporting upon the progress so far made, and usually the grant has resulted in a substantial gain of time needed for the completion of the projects. In some cases the results are already in press. In one instance the grant from the Council brought about its duplication from another source.

Special Projects of Research. During the year two important research projects have received the strong endorsement of committees of specialists named by the Council, one of them the project of an individual scholar, the other a coöperative project of a group, and there is ground to hope that in the near future funds can be secured for financing both undertakings. The committee on a catalogue of foreign manuscripts in American libraries, and the committee on a list of serial publications of foreign governments, are also actively seeking the financial support which will enable them to put their projects into operation.

Administrative Plans and Finances. The General Education Board has consented to meet, during a period of five years, necessary administrative expenses up to a maximum of $25,000 a year. This appropriation was made on the basis of a budget submitted to the Board by the Council. This grant will enable the Council to secure a full-time executive officer, to establish permanent headquarters, to increase the facilities of the committees of scholars who coöperate on problems and projects of research, and in various other ways to advance the work which falls within the scope of the Council. The new status goes into effect during the coming spring and will greatly increase the Council's capacity to serve the interests represented by the constituent societies.

The representatives of the American Political Science Association in the Council are Professors J. P. Chamberlain, Columbia University, chairman, and Frederic A. Ogg, of the University of Wisconsin.

Annual Report of the Social Science Research Council.[1] On the whole, the most significant points in the Council's activities in the year 1926 have been: (1) the financing of the administrative budget, and the consequent strengthening of the work of the committee on problems and

[1] Only a summary is presented here. The Council expects to print a detailed report in the near future.

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policy and the central office; (2) the establishment of the summer conference at Dartmouth; (3) the development of the program and advisory committees of the problems and policy committee, and the partial financing of the necessary budget for the next two years; (4) the completion, under the migration committee, of the significant project of the relation of the mechanization of industry to migration, and the notable advance toward completion of the study of the basic data of migratory movements by Professor Willcox; (5) the completion of the preliminary examination of the available data on the workings of the Eighteenth Amendment; and (6) the further development of a policy regarding fellowships and grants-in-aid.

Significant reports have been presented by the committee on fellowships, the committee on scientific method in the social sciences, the committee on abstracts of social science periodical literature, the committee on the publication of an index and digest of state session laws, the committee on scientific aspects of human migration, and particularly the committee on problems and policy.

The last-named committee has organized a series of advisory committees and has worked out a program and budget of significance. These advisory committees are: (1) committee on corporate relations, Mr. George O. May, New York City, chairman; (2) committee on crime, Professor John L. Gillin, University of Wisconsin, chairman; (3) committee on cultural areas, Professor William L. Westermann, Columbia University, chairman; (4) committee on grants-in-aid, Professor Dana C. Munro, Princeton University, chairman; (5) committee on industrial relations, Mr. Henry S. Dennison, Framingham, Mass., chairman; (6) committee on inter-racial relations, Mr. William W. Alexander, Commission on Inter-Racial Coöperation, chairman; (7) committee on international relations; (8) committee on pioneer belts, Professor Frederick Merk, Harvard University, chairman; and (9) committee on social and economic research in agriculture, Professor Henry C. Taylor, Northwestern University, chairman.

The following budget covering the needs of these committees was adopted at the September meeting of the Council:

	1st year	2nd year	Total
Scientific Method	$ 12,500	$ 12,500	$ 25,000
Eighteenth Amendment	240,000	235,000	475,000
Labor Output	7,200	9,700	16,900
Labor Market	2,400	2,400	4,800
Industrial Relations	7,500		7,500

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Pioneer Belts	2,500		2,500
Researches in Agriculture	12,500		12,500
Personality Traits	1,000		1,000
Crime and Criminal Justice	15,000		15,000
	$300,600	$259,600	$560,200
Marginal Area	100,000		100,000
	$400,600	$259,600	$660,200
Juvenile Delinquency	45,000	40,000	85,000
Total	$445,600	$299,600	$745,200

A grant of $127,500 toward this budget has been received, $42,500 conditioned, however, on the raising of $42,500. With these resources, assuming that the conditions can be met, it will be possible for the several advisory committees to develop their work in significant directions during the coming two years.

In this connection it may be well to restate the general purposes of the Council, determined in 1925 and still applicable: (1) ordinarily it will be the policy of the Council not to undertake investigation directly except in the case of preliminary studies; (2) ordinarily the Council will deal only with such problems as involve two or more disciplines; and (3) generally it will be the policy of the Council to serve only as a clearing house in regard to matters of research in the social science field.

CHARLES E. MERRIAM.

University of Chicago.

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BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

Man and the State. By WILLIAM ERNEST HOCKING. (New Haven: Yale University Press. 1926. Pp. xv, 463.)

In any work by Professor Hocking one looks for a judicious, broad, and well-reasoned argument, and the work before us fully lives up to these expectations. It is the product of acute observation and mature reflection.

It is sagely and temperately critical, while seeking a constructive interpretation of the state as the expression of deep-set human impulses. Professor Hocking does not here present us with a treatise in political science, though he promises to follow up the present work by a study of democracy. We are concerned rather with the ethical, philosophical, and above all the psychological conditions out of which the state arises.

What is entitled the "psychological approach" has a peculiar, and sometimes disconcerting, vogue on this continent. It dominates all the social sciences. One of its characteristics is that it explains social institutions in terms of *specific* "instincts" or impulses or attributes of the human mind. It proceeds from the mind to the institution, and not from the institution to the mind. Of certain dangers that beset this method Professor Hocking is well aware. He devotes a chapter (XIV) to a criticism of "scientific psychology," and says there some things that well deserved to be said. "Scientific psychology," he declares, "is no longer the knowledge of human nature. It deals, in practice, with only a fraction of the mind, and that not the most important fraction · · · · . It is in the non-rational that it builds its nest. It represents man's theoretical surrender of the ultimate guidance of his life to the control of powers which to him are blind · · · · . There is a certain illusory finality in assigning instinct as the cause of anything." The whole chapter may be warmly commended as a timely protest against some current tendencies.

But Professor Hocking's own treatment raises a broader problem of method. He is seeking for the genesis of the state and in effect is asking the question, "From what human attribute or impulse is the state derived?" At the end of a long critique he reaches his answer. The state

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expresses the "will to power," the "will to be in conscious knowing control of such energies as the universe has." "Briefly, the state exists to establish the objective conditions for the will to power in human history."

Now any answer in such terms seems inadequate and unsatisfactory. Of course the state reveals very markedly this "will to power." But is there any human attribute that it does not reveal? Is there any human desire of which it is not, directly or indirectly, an instrument? Moreover if the state expresses the "will to power," do not the institutions of the economic order also express it, just as clearly and just as vehemently? Professor Hocking practically identifies his "will to power" with the "will to live" (p. 309). But surely this "will to live" animates the family and the trade union just as much as the state.

What is lacking is a clear-cut definition of the state, to distinguish its special and proper character from that of other forms of association. The failure to attain it blunts the whole argument, so that the interest of the study remains rather sociological than political. And the reason lies in the "approach." The state is a quite definite organization. In the process of history it has evolved a particular form. It has its record of success and failure. It sought to control religion, for example, and failed. It sought to maintain order and justice, and, roughly speaking, has succeeded. It has abandoned certain functions and assumed others. How then shall we learn what it really is except from its institutions and its works? May not the differentia of the state lie, not in the fact that it expresses a special attribute of human nature (as distinct from that which, say, economic association expresses), but in the fact that it uses a particular medium (law backed by the force of the community) for the satisfaction of all relevant needs? Human experience gradually teaches us what this medium can accomplish, and then we know what the state is. But to seek back in human nature for some primary impulse to which the state answers is to set up an *a priori* principle which may itself turn out to be mistaken.

Our contention is well illustrated by Professor Hocking's chapter on "The Purpose of the State." "The form of the state's aim," he urges upon us in italics, "is the making of history; its substance is the making of men." But this tells us precisely nothing about the state. Inventors and prophets make history just as much as statesmen. Family training and economic struggle make men just as much as political law. What has any such generality to do with the peculiar character of the state? Professor Hocking refuses to accept the principle of Kant and Green

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that "the state must limit itself to external, that is, to physical, action." But he does not sufficiently realize that this principle is based on a perception of the limits set to the state by the nature of its institutions. The reason why state-control of religion is abhorrent to us is just that we have learned how badly the methods available to the state work when applied to religion. And in most civilized countries there is a strong feeling that state-action, with its necessary rigour and uniformity, is ill-adapted to inculcate morality. "If the state," says Professor Hocking, "were to try to promote morality—say by a prohibition amendment—it would find itself under precisely the same disadvantage which any individual suffers from in trying to do moral good to others." On the contrary, the state labors under a peculiar disadvantage, because it cannot be content to persuade or reason with us for our good—it must ordain. Green (himself, by the way, a prohibitionist) saw clearly the difference which Professor Hocking refuses to admit.

We have dwelt on these points because they suggest a weakness in the method adopted by Professor Hocking. Apart from this, the work is admirable, scholarly without being dull, and containing so many passages of first-rate social analysis that it is a pleasure to recommend it to the reader.

R. M. MacIver.

University of Toronto.

The Social and Political Ideas of Some Great Thinkers of the Renaissance and the Reformation. Edited By F. J. C. Hearnshaw. (London: G. G. Harrap. 1925. Pp. 216.)

The Political Consequences of the Reformation. By R. H. Murray. (Boston: Little, Brown and Company. 1926. Pp. xxiv, 301.)

These books bear welcome witness to a growing sense of the need to thicken the background of political studies—of the need to study politics not on a flat plane of contemporaneous fact, but in the light of what men have thought they were about when they waged the controversies and wrought the institutional changes that have left us where we temporarily are.

The volume edited by Professor Hearnshaw, of the University of London, is a successor to one of similar character, *The Social and Political Ideas of Some Great Mediaeval Thinkers*, published by the same editor several years ago. The new volume consists of lectures by different scholars on Nicholas of Cues, Sir John Fortescue, Machiavelli, Sir Thomas More, Erasmus, Luther, and Calvin, together with an intro-

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ductory survey of the period as a whole by the editor. Not all are of equal merit. None pretends to add new material from the sources, and several are frankly based on secondary studies. But almost all present fresh and suggestive interpretations of their subjects; and several have in high degree the quality of picturing political ideas as integral parts of the political history of the period in which they were produced. This is notably true of Professor Hearnshaw's lecture on Machiavelli, which, though obviously cramped for room, is in some respects more penetrating, better proportioned, and more fruitful than the famous essays of Lord Acton and Lord Morley on the same subject.

The period covered by both books under review is one which has lent itself to divergent interpretations. In Professor Hearnshaw's words, "It is the fashion nowadays to deny the Renaissance and to decry the Reformation." To this fashion neither Professor Hearnshaw nor the majority of his contributors conform. There is full recognition of the ultimate bankruptcy of the institutions to which the Middle Ages had pinned their faith, of the dissolution of the Empire and the dissoluteness of the Church. The essays on Nicholas of Cues and Machiavelli represent centralized absolutism in both the Church and the national *regna* as the logical outcome of the mediaeval wreck. The monarchical absolutism of the sixteenth and seventeenth centuries is thus not laid at the door of the Reformation after the manner of Figgis. Rather the Reformation is conceived as embodying some at least of the seeds of modern constitutional liberty. "Even the fascination of epigram," writes Professor J. W. Allen, "could hardly take a man farther from the truth than to say that 'had there been no Luther there could never have been a Louis XIV' "; and Professor Matthews writes: "The austere discipline of the Calvinist régime is the very antithesis of what the modern world means by liberty, but it was a preparation for freedom. The self-determining religious communities of the reformed faith were seed-plots for the democratic state."

This view is in the main the one also followed by Mr. Murray, whose book begins with Machiavelli and ends with Hooker, taking in Luther, Calvin, Bodin, the Calvinist pamphleteers, and the Jesuits by the way. It is a much more ambitious essay, heavily documented with foot-note references to original sources and modern monographs; but the material in each chapter is thrown together so loosely as to blend into no very suggestive interpretation of the whole of any writer discussed. Contrary to the promise of the title, the treatment is confined almost exclusively to the history of ideas, with only slight attention to their relation with

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contemporary political history. A searching review published in the Literary Supplement of the *London Times*, April 15, 1926, pointed out a number of surprising statements in Mr. Murray's text, as, for instance, that Bodin "borrows from Polybius his disapproval of the mixed state" (p. 134). Another not caught by the *Times* is the statement that Engelbert of Volkersdorf (1250–1311) wrote during the "quarrel of the Investitures" (p. 67).

More surprising still is the apparent nature of the connection between Mr. Murray and some of his sources. In his chapter on Calvin he acknowledges indebtedness at least twice to the article of Professor H. D. Foster on "The Political Theories of Calvinists before the Puritan Exodus to America," published in the *American Historical Review*, xxi, 48 ff. A comparison of this article with pages 110–125 of Mr. Murray's book reveals an almost complete identity of subject matter in a somewhat different order of arrangement, together with some striking parallels of phraseology. Thus Professor Foster writes (p. 482): "In England the *Institutes* was considered 'the best and perfectest system of divinity' by both Anglican and Puritan, until Laud's supremacy. [Here follows a foot-note reference: 'Bishop Sanderson (Charles I.'s chaplain), Works, i, 297.'] In 1578 (with Calvin's catechism) it was required of Oxford undergraduates. Curious witness to its grip upon men was borne by Laud in 1636. Admitting that the *Institutes* 'may profitably be read as one of their first books of divinity,' Laud secretly endeavored to dissuade New College students from reading it 'too soon'. 'I am afraid it · · · · doth too much possess their judgments · · · · and makes many of them humorous in, if not against the Church.' " Mr. Murray writes (p. 111): "In England Bishop Sanderson, Charles I.'s chaplain, considered the *Institutes* to be 'the best and perfectest system of divinity.' In 1578 the undergraduates must have been of a sturdy mental build for they were required to pass an examination in it, and also in Calvin's catechism. In 1636 Laud admitted that the *Institutes* 'may profitably be read as one of their first books in divinity,' yet he feared the trend of it might influence the men of New College unduly if they read it at a receptive age, or, as he phrased it, 'too soon.' He concluded, 'I am afraid it · · · · doth too much possess their judgments · · · · and makes many of them humorous in, if not against the Church.' "

On page 498 of his article, Professor Foster refers to Althusius as a "courageous magistrate" at Emden; Mr. Murray employs the same rather unusual characterization at page 118 of his book. Elsewhere Professor Foster writes: "In 1594 the Huguenots closely followed their

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ecclesiastical model in the organization of their political national assemblies . . . . 'They have begun to spread among the populace the idea that the King has his authority from the people, and that the subject is not obliged to obey the Prince when he commands anything which is not to be found in the New Testament. And they are on the highroad to reduce that province to the condition of a democratic state like Switzerland,' wrote the Venetian Suriano." Mr. Murray writes (at page 115): "By 1594 the organization had reached a far more highly developed stage, and so much was this the case that the Venetian Suriano wrote: 'They (*i.e.* the Huguenots) have begun to spread among the populace the idea that the King has his authority from the people, and that the subject is not obliged to obey the Prince when he commands anything which is not to be found in the New Testament. And they are on the highroad to reduce that province to the condition of a democratic state like Switzerland.' " A glance at Whitehead's *Coligny*, p. 92, cited as authority for the passage from Suriano by Mr. Murray as well as by Professor Foster, shows at once that the Venetian's statement belongs to 1561–2, and not to 1594.

It is also interesting that Mr. Murray does not cite Professor Foster's article in any of the footnote references to the passages which I have quoted, although both cite the same references with a truly remarkable parallelism. Indeed, of the forty-four footnotes in the portion of Mr. Murray's chapter which parallels Professor Foster's article, at least twenty-seven are substantially identical with Professor Foster's footnotes.

Even more remarkable than these resemblances between the second part of Mr. Murray's chapter on Calvin and Professor Foster's article are the parellels between the first part of the same chapter and portions of the fifth volume of E. Doumergue's great work on Calvin, to which Mr. Murray also acknowledges indebtedness. Of the sixty-eight footnotes on pages 93–108 of Mr. Murray's book, sixty-two are practically identical with footnotes to the portions of Doumergue's text which are parallelled by these pages of Mr. Murray's text. The parallels in the text are as striking as those in the footnotes. A sample is afforded by Mr. Murray's paragraphs beginning at the bottom of page 92 and continuing to the middle of page 94, which read almost as would a translation of Doumergue, V., 401–402. The same correspondence may be noted between a large number of passages in this part of Mr. Murray's text and passages in the fifth volume of Doumergue between pages 399 and 499. It is certainly convenient to have so much of Doumergue's

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expensive work made available in this way, but the fact that corresponding passages do not appear in the same order in the English as in the French text has not increased the clarity or the value of the former.

The reviewer has not had time to make similar comparisons of Mr. Murray's other chapters with previous publications on the same subjects to see whether similar parallelisms are discoverable. It would appear, however, that his second chapter, on Luther, at least from page 45 to page 79, is simply a reprint of passages from his earlier book, *Erasmus and Luther*, without any other indication of this fact than a statement in the preface acknowledging permission by the publishers to use extracts from the earlier book.

JOHN DICKINSON.

Harvard University.

The Political Ideas of the English Romanticists. By CRANE BRINTON. (New York: Oxford University Press. 1926. Pp. 242.)

This book has the two merits, not always associated, of being both the fruit of careful research and an example of a style, if perhaps over-allusive and too epigrammatic, quite certainly pleasing. Mr. Brinton's presentation is, in some measure, hampered by the obligation under which he conceives himself to labor of supplying the reader, in order to present a balanced picture, with references to the writings of persons of very minor literary fame, whose connection with political movements was slight and whose own political theory was tattered and banal. Perhaps the representative of the "man in the street" is more significant as an index of the force of inertia than intelligent as a witness to the meaning of movements and ideas. The author, however, is not content to give us examples of how the ideas of the romanticists were so alloyed and popularized as to become influential with the many; in his discussion of Wordsworth, Shelley, Coleridge and others, he renders the great service of drawing our attention to the fact that this influence extended far beyond the sphere of art or *belles lettres*. It is probably true that most historians of theory have been too formal in their understanding of their task to expatiate, as they should, upon the political significance of Dickens, of Disraeli the novelist, and of others who stood in the place now occupied by Wells and Shaw.

As by Professor Whitehead, in his *Science and the Modern World*, so here, the Romantic movement is shown to have been a reaction against abstract rationalization and, in its ultimate tendency, conservative (as all nature-movements must be), even when in its immediate manifesta-

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tions it was revolutionary. "Nature is goodness, happiness, purity, simplicity." Romanticism teaches a reconciliation with the natural scheme of things, "a rest in unrest." The "law of nature" is only revolutionary when Stoic or Whig or Encyclopaedist identifies it with reason. It is the abstract idea which is explosive, not the sentiment for the concrete. The natural goodness of man is revolutionary as a doctrine only in the mouths of the rationalist Godwin and of the prosaic Bentham, men Palladian in their mental architecture, not when voiced by the Lake poets. The Westmoreland hills taught men not to destroy the vices of civilization so much as to ignore them. In this respect Shelley, who traces rather from the Encyclopaedists and Condorcet than from the Rousseau who wrote the *Discours sur l'Inégalité*, is not so much a Romantic as a revolutionary prophet of a scientific Utopia. Mr. Brinton perhaps scarcely lays sufficient emphasis upon this classical and Hellenic element in Shelley, who loved an imagery taken from the world of the natural sciences.

Our present interest in the Romanticists who fathered the historical school (as distinct from such Lucretian souls as Shelley) is perhaps in danger of being too small, because the instant need of the present age is Greek, not Gothic. In order to advance to a new knowledge and control, deliberately "we murder, to dissect," interfere with life's smaller natural pleasures and ancient order of birth and work and social life, proposing to secure in some more rational scheme a wiser happiness. We abstract and scientize in disregard of values (and hence of what Mr. Brinton calls "the great English tradition"), and when we return to them in order to enjoy experience, the values we seek are like some crystal—limited, intelligible, clear-cut, mundane—not the supermundane glories of inchoate nature and of Gothic spires. It is with a sense of quiet satisfaction that we turn over these leisured pages; yet, as we read, we only feel ourselves the more out of touch with the optimistic beliefs of a Wordsworth or Coleridge or Scott, of which the cheaper rendering is that all will be well if some premier or statesman, some high-born dean, or member of that class fitted and used to govern, will but speak in accents which display "humanity" and appeal to "natural common sense." We prefer Voltaire writing in praise of intelligent despots.

"*Claudite iam rivos, pueri: sat prata biberunt*," we cry, and are on the point of turning away from these literary pleasures to dull questions of the quantitative measurement of political power, when we discover Mr. Brinton's "Conclusion," with its declaration of faith in the work of intelligence in social affairs and in the future of the social sciences. At

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first, the violent discontinuity from the previous chapters, amounting to irrelevance, strikes us; then the value of histories of thought such as this occurs to us, whereby, as Polybius told us to expect, we learn vicariously, from the errors of our forefathers (however concealed in splendid words), the clues for our own advance and the material for our own "conclusions." The study of past political thought at once illumines history and throws a dubious but welcome beam into the mists of the future.

G. E. G. CATLIN.

Cornell University.

The Survival of the Democratic Principle. By PERRY BELMONT. (New York: G. P. Putnam's Sons. 1926. Pp. 334.)

The author of this volume is a son of August Belmont, who was for twelve years (1860–72) the chairman of the national committee of the Democratic party. The younger Belmont was a student of history under Henry Adams at Harvard, and later a student of law in the universities of Berlin and Columbia. He cast his first presidential vote in 1872 for Charles O'Conor, the "straight Democrat" of that unusual campaign. Young Belmont's convictions and his party orthodoxy constrained him from voting for Horace Greeley, the life-long foe of his party, who had said of the Democratic party that he "would have it written upon his tombstone that he was never its follower and that he had lived and died in nothing its debtor."

Mr. Belmont comes naturally to an intelligent interest in American politics. This volume shows that he has been a careful reader of American history and that he has been a close observer, during a long life, of political issues and events. He is an able lawyer, has been a member of Congress, and has represented his country as a diplomat abroad. He ought to know, if any one does, the "Democratic principle" of whose "survival" he writes. If, however, it is the author's purpose to reveal some principle with which the Democratic party has been constantly and exclusively identified, one cannot say that his purpose has been successfully accomplished.

The volume is miscellaneous in its contents. It consists of three parts: (1) a chapter on the writing of political history, consisting, chiefly, of extracts from historical writers, and a series of comments on certain aspects of American politics, in which the author takes various writers to task, and commends others, for their opinions on the Jeffersonian system of government; (2) a discussion of centralization and the tariff, and (3) an appendix, which takes almost equal rank in value with the

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rest of the volume. This appendix contains three papers arguing for the admission of cabinet members on the floor of Congress with the privilege of explanation and debate.

The body of the volume discusses many miscellaneous and unrelated topics, without regard to logical or chronological order. After a few opening remarks on Jefferson, Lincoln, Jackson, and the old Whigs, the author brings into view the political results of Antietam; the military merits of McClellan; the politics of the Civil War; the Dred Scott opinion; the disruption of the Democratic party in 1860; the influence of the Adams family in American history; the War for Independence and Jefferson's idea of independence without separation, as in the case of Canada; a comparison of the British and American constitutions; the doctrine and practice of judicial supremacy in legislation, which the author refers to as originally understood and intended by the founders of the republic; Jefferson's leadership, and how he compared with the men of his time, and how he has been misrepresented and unfairly denounced by writers like Morse, Adams, Oliver, and others.

The author supports the movement against centralization and the growth of irresponsible commissions and bureaus. But he does this, chiefly, by extensive quotations from Republican senators like Borah and Wadsworth. This source of his argument, like many facts in our history, fails to uphold, if it does not refute, Mr. Belmont's assertion that "there are fundamental differences to which the two great political parties are unalterably attached." He admits that many Republicans are Jeffersonian Democrats without knowing it. But he does not establish the fundamental differences between the two parties. That would, indeed, be difficult to do. Among the principles "the Democratic party is pledged to maintain" is named "extension of the power of the people by universal suffrage" and confidence in popular government—by which we must suppose he means *white* suffrage. The Republican "war amendments" were certainly more in harmony with the "democratic principle" than was the Democratic party of that day.

Also, he says, "centralization of the power of the federal government and subjection of local authority are Republican ideas." What would Senator Wadsworth and Senator Borah say to that? What did those early Republicans Charles Sumner and Ben Wade have to say about it when the fugitive slave law was imposed upon the states? And what was the attitude of the New England Federalists toward the embargo and the trade restrictions under Jefferson and Madison? Were central and tyrannous war powers any more pronounced and extended under

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President Lincoln, the Republican, than under President Wilson, the Democrat? Which party or what leaders favor central powers or "state rights" depends entirely upon the circumstances, and upon whose policies or desires are advanced or hindered thereby. It all depends upon whose ox is gored.

The author voices opposition to federal subsidies for more and better roads throughout the country. It seems to him undemocratic and unjust that the great wealth of New York and New Jersey should contribute to good roads in Iowa, Arkansas, or Oregon. Let every state build its own roads. Just why it is more undemocratic or unjust for the national government to aid a state in road-building than for a wealthy city within a state to help a rural district, or for a childless millionaire to help educate a poor man's numerous children, the deponent saith not.

The volume has a good index and is admirably published. On the whole, it is a product of decided merit. It is full of helpful and suggestive material for the student of political history. But in spite of the author's manifest spirit of fairness the book is permeated to a degree with a distrust of democracy. The author is a democrat of a kind, up to a certain point. But like some others he is a little afraid of what the people might do if they were given power and were to take a notion to govern in their own interest.

JAMES A. WOODBURN.

Indiana University.

Introduction to the Study of Public Administration. By LEONARD D. WHITE. (New York: The Macmillan Company. 1926. Pp. xiii, 495.)

The literature of public administration is vast, but it has not hitherto included a systematic analysis of the American administrative system like that represented by Professor White's volume. This book views administration as a single process and avoids the study of local, state, or federal administration as such. Unlike the writings of Goodnow and others, it emphasizes management rather than administrative law. "It assumes that administration is still primarily an art but attaches importance to the significant tendency to transform it into a science. It assumes that administration has become, and will continue to be, the heart of the problem of modern government." Disregarding the technical phases of administration, the author confines his attention to the fundamental questions of organization, personnel, control, and finance.

The early chapters discuss the place of administration in the modern state, the administrative mechanism, centralization, integration, and

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administrative reorganization. Financial problems are not separately treated in any one chapter, but are considered at appropriate points in the general account. The personnel problem occupies more than one-third of the work and is very ably handled. Particularly noteworthy are the chapters on morale and on public employees' organizations. In the former, Dr. White states his thesis that "efficiency is fundamentally a function of high morale, and can be fully achieved only by giving fair recognition to the rights and interests of officials and employees" —a theme which is fully developed in the subsequent pages. The latter chapter contains the best brief account of the organization and unionization of government employees in the United States. The remaining chapters discuss administrative rules and regulations, and legislative, popular, and judicial control of administration.

While the writer is chiefly concerned with American administration, he has made many profitable comparisons with English principles and practice. On the other hand, his references to Continental countries are usually brief and incidental. The book could have been strengthened by a more generous inclusion of material drawn from French and German sources. This would not have unduly expanded the work, and would have offset the almost too frequent recurrence of "Chicago," "Illinois," and "Massachusetts" in the text.

Commendable details of the volume are an attractive format, numerous charts and tables, two appendices on the sources of public administration and on the union affiliations and local organizations of Chicago's municipal employees, and an unusually comprehensive bibliography. However, the bibliography is largely imbedded in the footnotes and is not sufficiently assembled in convenient reference lists. An effective use of quotations throughout the work illuminates the questions under discussion and provides the reader with a more intimate knowledge of the "inside workings" of administration. The index is far from satisfactory.

Professor White writes for the college student and for the citizen interested in governmental administration. He has not only produced a valuable and readable treatise well suited to such an audience but he has also envisaged many problems which require additional investigation, and his numerous suggestions for further research blaze a trail which others may follow with profit. In short, the book is a notable contribution to the study of public administration.

ROGER H. WELLS.

Bryn Mawr College.

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The Public Health Service. By Lawrence F. Schmeckebeier. (Baltimore: The Johns Hopkins Press. 1923. Pp. xiii, 298.)

The National Government and Public Health. By James A. Tobey. (Baltimore: The Johns Hopkins Press. 1926. Pp. xviii, 423.)

Mr. Schmeckebeier's study is one of the series of service monographs of the United States government issued by the Institute for Government Research at Washington, D. C. Like the other monographs in this series, it gives a descriptive account of the historical development, activities, organization, and personnel of the particular service covered —in this case the public health service in the department of the Treasury which has developed from the marine hospitals first established in the early days of the national government. It serves to emphasize the growing importance of this service, but makes no attempt at criticism, nor at any study of other health activities of the national government.

Mr. Tobey's more comprehensive work, in the series of Studies in Administration, undertakes the larger task of a general survey of the health agencies of the national government, noting the extent of duplication and considering plans for the more effective correlation of these health activities. This survey covers some forty bureaus or other administrative units of the national government. Of these, public health is a major interest of seven agencies; it is an important but secondary interest for seven others. Eight other agencies furnish medical service or public health work of restricted or special scope; and the remainder do only incidental public health or medical service.

After considering previous attempts at correlation, Mr. Tobey proposes bringing together under a common direction the public health service, the division of vital statistics of the census bureau, the children's bureau of the department of labor, the nutritional research work of the bureau of chemistry and the division of foods and nutrition of the bureau of home economics (in the department of agriculture), the medical division of the office of Indian affairs, and St. Elizabeth's Hospital. These should be placed under the general supervision of an assistant secretary with an advisory council, and detailed plans for reorganization and coördination could be worked out.

Mr. Tobey opposes the proposal for a new department of education and relief as "undoubtably unsound," on the ground that health and education would be subordinated to veterans' relief. Mr. Willoughby, in the Preface, suggests that public health work might be placed in the same department with education.

John A. Fairlie.

University of Illinois.

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The Merit System in Government. REPORT OF THE CONFERENCE COMMITTEE ON THE MERIT SYSTEM. (New York: National Municipal League. 1926. Pp. 170.)

This is a concise report on personnel management in the public service, with emphasis upon provisions which may be incorporated into laws creating employment or civil service commissions. Prefacing the recommendations, there is a statement of the magnitude of the problem and a discussion of the underlying reasons for advocating centralized employment control. The report was prepared by a special committee representing in its membership the National Municipal League, the Governmental Research Conference, the National Civil Service Reform League, the National Assembly of Civil Service Commissions, and the Bureau of Public Personnel Administration. The results may be considered to be the consensus of opinion formulated by men who are thorough students and practical managers in the actual field of public employment.

Although the Pendleton Act was passed by Congress in 1883, similar laws are now utilized by only ten states, two hundred cities, and ten counties. It has been encouraging to observe the readiness of the larger cities to accept the merit system, but it has been equally disappointing to note the reluctance on the part of the state and county governments to come into the fold. The reasons for this hesitancy are of course many, not the least being the inability of the reformers themselves to agree upon provisions for a law. The laws that have been passed have followed to a considerable extent the federal act, but this has not proved to be the best of models. Furthermore, the problem has been such a huge one, and a comparatively new one, that there has not been sufficient experience to formulate accepted principles. Consequently, there has been confusion of thought and much guess-work upon such problems as the organization of civil service commissions, the extent of their powers, and relationships to other departments of government. This confusion has made it easy for the opponents of the merit system to place obstacles in the way of reformers who themselves may have been over-zealous and certainly not too sure of their ground.

Here in a small pocket volume are tucked away in condensed form the recommendations of persons who are familiar with the old problems as well as the new. The members of the Conference Committee have had opportunity to consider the larger aspects, and also to be in constant touch with the most minute details of personnel administration and methods. The findings, to be sure, are not derived from laboratory tests

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which have isolated fixed principles; but they do result from an analysis of a wealth of experience which has been judiciously and conservatively interpreted. In presenting a model law establishing a public personnel commission (the committee does not use the term "civil service") and defining its powers and duties, there is absence of dogmatism and insistence upon details. Whenever the members were uncertain regarding a provision for the law they carefully left the question open or recommended several alternatives for consideration.

The thought has occurred to the reviewer that the work of the committee may prove to be the most valuable and constructive contribution to the employment problem in the public service since Dorman B. Eaton's reports of 1879 and 1881.

MORRIS B. LAMBIE.

University of Minnesota.

Federal Water-Power Legislation. BY JEROME G. KERWIN. Columbia University Studies in History, Economics and Public Law, No. 274. (New York: Columbia University Press. 1926. Pp. 396.)

Despite its title, this study treats mainly of "the great fifteen-year struggle for water-power legislation" which culminated in the act of June 10, 1920, creating the Federal Power Commission composed of the secretaries of war, interior, and agriculture whose function is to exercise general administrative control over all water-power sites and kindred establishments that are located on the navigable waters, on the public lands, and on the reservations of the United States. Students desiring encyclopaedic information concerning the evolution of this act should be gratified by the hundred pages of appendix and the continuous insertions of documentary material throughout the 280 pages of text proper; much of it being abstracts of statistical tables, the Congressional Record, statutes, judicial opinions, the World Almanac, and kindred reference matter, sometimes running along for ten pages at a stretch, e.g., pp. 143–152, being a reprinted form for power permits. These data are utilized effectively in the exposition of economic and legal aspects of water-power and in four concluding narrative chapters entitled: "The Issue Comes to Light," "Congress Battles On," "Climax and Anticlimax," and "The Progress of the Power Act."

While justifiably limiting his treatment to these six phases, the author disregards many historical factors which might have illuminated these same topics. For instance, the economic and legal aspects might

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have been clarified further by a wider survey of colonial and state governmental relations to water-power which had been anticipated in Plymouth and in New Netherlands prior to 1630. Such related developments, which became very extensive during the agitation for the federal act of 1920, are disposed of lightly in two pages (21–22) which seem to be an abstract, both text and footnotes, from pages 3–16 of a brief monograph entitled *The Federal Power Commission* published in 1923 by the Institute for Government Research in Washington. Early Congressional relations to water-power, also, are passed over. Concerning water-power dams, it is stated (p. 105) that "the first general legislation on this subject is found in the rivers and harbors act of July 5, 1884." This might bear modification in view of the federal maintenance of structures in the Delaware in 1789, petitions concerning them in 1796, Albert Gallatin's plan for canal development upon principles kindred to those upon which the Federal Power Commission is based, etc.

The dramatic enactment of the measure of 1920 is presented so as to illustrate impressively the present vitality of the states' rights doctrine, the reality of sectionalism, and the delicacy of Congressional procedure; but it might not have been amiss to include a more thorough consideration of the administrative control of water-power that actually had been exercised prior to 1920 by the secretaries of war, interior, and agriculture.

As to the future possibilities of water-power, Mr. Kerwin's imagination is not so exaggerated as that of some enthusiasts who observe notable developments even in Iceland, who are optimistic concerning the Congo, and who feel reassured by the 1926 annual report of the Federal Power Commission which declares that the past five-year period has witnessed the greatest hydro-power development in American history, and which indicates that the projects begun last year will equal about forty per cent of the total constructed during these last five years.

In general, the book is valuable for reference, although it contains no classified bibliography. As a general treatise, it contains much of interest that might be rendered more readable through condensation, and through a style that would transcend the insertion of varied source material.

MILTON CONOVER.

Yale University.

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The American Senate. By Lindsay Rogers. (New York: Alfred A. Knopf. 1926. Pp. xiv, 285.)

What Professor Rogers himself describes as a "discourse" cannot be fairly appraised without careful perusal of the preface, in which the purpose of the volume is set forth. It was not meant to be a description, but an argument. The thesis to be established is that the Senate is the indispensable check and balance in the American system; that only complete freedom of debate permits it to play this rôle; and that this rôle has become the more important by reason of the need to offset what the author calls "government by favorable publicity through the medium of the White House 'Spokesman,'" that is to say, the President.

In building up this argument the House is first reduced to insignificance. No evidence is submitted to prove the allegation that it is "the most ineffective lower chamber in the world," but aside from matter of comparison the charge that the House is ineffective must be admitted to be substantiated in the particulars on which the author dwells. These, however, relate only to the floor work of the House, where debate is no longer of consequence. The real work of the House is now done in the committee rooms, and those who share in it know that the change has not in fact lessened the power of the House in the actual making of laws. Professor Rogers would give the contrary impression by his citation of figures showing the number of amendments made to revenue and appropriation bills by the Senate—figures that, unexplained, would justify his allegation of slovenly work in the lower branch and the conclusion that the Senate is both the more intelligent and the more powerful body. Had he taken part in the work he would have known that many of these amendments were merely corrections of typographical or clerical errors, and that others resulted from advice that the Treasury experts had not given to the House in time. In one instance a Supreme Court decision, published after a bill had left the House, compelled a series of changes. In respect to these bills—far the most important and considerable work of Congress—change in House rules has of late years made the House the controlling factor. This may illustrate how difficult it is to deal accurately with legislative processes from the outside. The result may be as futile as an attempt to discern the character of a man from his photograph.

Professor Rogers gets on surer ground when he takes his second step and reaches the exclusive powers of the Senate in the matter of appointments and treaties. Here his observations are accurate and enlightening. Also there is much that is weighty in what he has to say about closure in

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its bearing on the relative influence of Senate and House. It is persuasive, however, only in its relation to the shaping of public opinion, for closure has really little effect on the great bulk of pending legislation. Doubtless it will be long before the critics of Congress come to understand that in the making of laws oratory no longer counts.

Professor Rogers, however, holds that law-making is but one of three purposes of legislatures. Besides legislating, they are to control expenditure and to supervise the administration. This he thinks "it is hardly necessary to remark." Yet as the foundation for the rest of his argument, should he have contented himself with assertion of what may be seriously questioned? Where is the proof that, at any rate in the United States, a legislature has any business to interfere with the spending of money that has been appropriated, or to supervise the administration of law? Those are natural functions under the system of ministerial responsibility, with the government merely a committee of the legislature itself. But where is the warrant for them in an American constitution, state or federal?

If the premises of the author be granted, then what he has to say about Congressional investigations may convince, though acceptance of his view will come hard for any fair-minded legislator who has watched the cruel injustices of persecution by partisans and of trial by newspaper. Usually instigated to make political capital, often perverted to advance personal ambition, reeking with unfairness, generally futile, these investigations are not seldom a bigger scandal than any they disclose, and do more harm than good.

The climax of the argument is capped with a severe indictment of President Coolidge for giving his opinions to the country under the guise of utterances by the White House "Spokesman." The conferences that the President holds twice a week with the Washington correspondents seem to Professor Rogers to be fraught with grave menace that only unchecked oratory in the Senate can combat. The reader may decide for himself whether there is here real ground for serious alarm.

ROBERT LUCE.

Washington, D. C.

Cases on the Law of Public Utilities. SELECTED AND ANNOTATED BY YOUNG B. SMITH AND NOEL T. DOWLING; Including *Cases and Readings on Rates.* SELECTED AND ARRANGED BY ROBERT L. HALE. (St. Paul: West Publishing Co. 1926. Pp. xxvii, 1258.)

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Cases and Authorities on Public Utilities. EDITED BY G. H. ROBINSON. (Chicago: Callaghan and Company. 1926. Pp. xxiv, 976.)

The competition among law publishers and law teachers to bring out bigger and better casebooks has resulted in the almost simultaneous publication of these two formidable volumes. One is a monument to the labors of one man; the other results from the collaboration of three. Although the Robinson volume may contain a little more matter on each page than the other, the number of pages in each may be taken as a rough index of the quantity of material it contains. The editors and publishers of the Robinson casebook might have been a little more careful in proof-reading, as well as in indicating when a decision was printed only in part, but such blemishes upon the volume as result from this slight negligence are not serious matters after one has been warned of them. Between the two volumes there are, however, some really striking differences.

The Smith and Dowling volume is a solid, conservative casebook which follows the track beaten out years ago by Beale, Wyman, and others, and which, were it not for Professor Hale's long and distinctive chapter (248 pages) on rates, would be set down as a commendable but not unusual volume of decisions. Its approach is partly historical. There is at the outset a long section on the regulation of business at common law, commencing with Rich v. Kneeland, a King's Bench decision of 1613 concerning a common bargeman. Throughout the volume the reviewer found other early decisions—forty-one, in fact, prior to Munn v. Illinois (1876)—although, naturally, the majority of the decisions printed are of more recent date.

Throughout the volume, also, it is the common carriers, and especially railroads, which receive the most attention, and the work closes with forty-nine pages devoted to reprints of the Interstate Commerce Act and the Elkins Act. Much attention is given, too, to the law of liability as applied to carriers and other utilities, one chapter of three hundred and forty-eight pages, or more than one-fourth of the book, being devoted to this subject. Throughout the Smith and Dowling portion of the volume are numerous brief footnotes containing some text matter and also citations of cases and some articles relevant to the cases in the text. This is all as one would expect in a volume in the American Casebook Series.

The chapter on rates by Professor Hale is, however, a marked departure, and shows his clear realization of the fact that judicial decisions, used alone, are inadequate for presenting the law in a rapidly developing

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and highly controversial field. This chapter is a very skilful and illuminating combination of judicial decisions, Interstate Commerce Commission and public utility commission cases, and articles by authorities on the several phases of the subject. It contains more excellent material on valuation and rate-making than the reviewer has ever seen brought together into one book on the subject, and it is valuable and stimulating largely because the editor has, when necessary, gone boldly to other authorities than the judges for material which throws light upon his problem.

As we turn to Professor Robinson's volume we find that, as the work of a single person, it gives the impression of having more unity and a better proportioning of space to the various subjects, as well as more uniformity of treatment. In several respects, also, it is almost unique among casebooks. Instead of reaching back into the past for the cases through which the rules and the reasoning have developed, it seeks the very latest decisions. Of 231 cases counted in the volume, only fourteen were decided before 1900, and of these only two, decided in 1872 and 1873, preceded Munn v. Illinois. By far the largest number of cases (177) were decided between 1913 and 1925, and a very large proportion of these date from after the war. The student who uses this casebook will find himself from the first plunged into the public utility controversies of the present day. At the outset he reads the German Alliance Insurance Co. case, the New York rent law case, a taxi-cab case, and others which explore the border-lines of the public utility field. From an analysis of "the public utility concept" the volume proceeds, following an original outline, through the entry into the public utility status, to the duty to serve all and without discrimination, the obligation to serve at reasonable rates, the ascertainment of reasonable rates, the obligation to supply adequate facilities and to continue service, down through a number of special problems arising out of regulation by commission. One chapter is devoted to overlapping areas of regulation, federal, state, and local. The volume closes with three chapters on the duties of performance owed to individuals, with some consideration of the problem of liability.

Aside from the uniformly up-to-date character of its approach, the volume by Professor Robinson is commendable in several other respects. It begins by presenting a two-page list of treatises on public utilities, and follows this up with a twelve-page list of important law-review articles grouped by subjects. In addition to these aids to research, the

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editor has prepared numerous long and short notes on the authorities, which lie thickly scattered throughout the book, and which contain numerous citations of additional cases, law-review notes, articles, and treatises upon the particular subject in hand, as well as some analysis of the law itself. As an example, we may cite the two-page note on the valuation of railroads beginning on page 399. In this one note are cited, under several subheads, four additional cases, several law-review notes, a treatise on railroad valuation, several reviews of the same, a number of law-review articles on railroad valuation, and a longer list of important legal articles on valuation problems in general. A careful count in several parts of the volume indicates that nearly one page in every four is devoted to such notes prepared by the editor. It is these additional aids to study which give the volume unusual value not only to the student and the teacher of the law but also to the practising attorney.

Here, then, are two distinctive volumes on the subject of public utilities. Different in scope, method, and particular contents, they are also, in a sense, complementary rather than competing books. For the researcher and the specialist both will be useful, but the average law teacher finds the time for his course in public utilities so limited that he can use only one casebook in his class. His decision as between these two books will depend largely upon the type of course he plans to give.

WILLIAM ANDERSON.

University of Minnesota.

Petit Dictionnaire de Droit Municipal. By MAURICE FELIX, with MARCEL ARAGON and Others. (Paris: Librairie Dalloz. 1926. Pp. 836.)

This is a work by practical men for a practical audience. Its authors are, with one exception, officials of the Prefecture of the Seine, and the exceptional author is a communal official within that Department. It is addressed to mayors, adjuncts, municipal councillors, city-hall employees, etc. We ordinarily think of the Prefecture of the Seine as chiefly concerned with the government of Paris, which is carried on, as is well known, under a special legal régime. It is nevertheless a fact that there are in the Department seventy-eight other communes, subject to the same laws as the communes of France in general. These communes of the "banlieue" vary considerably in size and area, but they are alike in one thing, namely, they are growing with, what is for France, prodigious rapidity. Such expanding cities are perforce constrained to

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resort repeatedly to the Prefecture for authorization to undertake new municipal services. The officials of the Prefecture of the Seine, therefore, are brought into the most constant and complete touch with the great body of law affecting ordinary communal administration.

The authors have availed themselves of their experience to create a work of distinctly objective tone. They have deliberately avoided those theoretical discussions which enrich or clutter, according to one's point of view, the more elaborate treatises on administrative law. Under each topic the law as it actually exists is stated with simple brevity. The result is not exactly a pocket compendium of French municipal law, for no pocket outside of Brobdinag could hold it, but a succinct statement of the law within the reach of men of limited experience and no legal training—such men as in fact constitute the governing bodies of the great majority of French communes, 22,000 of which, be it remembered, have less than 500 population.

The work under review is comprehensive. The main topics such as alignement (street-lines), enseignement primaire public, maire, octroi, etc., are arranged alphabetically. Considering the scope of the work, there are not many of these major topics, and the articles under them tend to become longer than one would expect in a "dictionary". The longer articles, however, are subdivided analytically and supplied with sub-titles. At the head of each major subject are cited the laws, decrees, etc., relating to that subject. An index, unusually complete for a French publication, makes every portion of the work easily available in spite of the fact that the dictionary idea has not been pressed to its utmost.

The *Petit Dictionnaire* is neither elaborate nor profound. It makes no pretensions to be either. It will never be cited as an ultimate authority. So far, however, as an American can judge, it possesses that degree of accuracy which the official position of its authors would seem to guarantee. Furthermore, its very simplicity makes it easy of comprehension by one who is not native to its idiom. Readers of the REVIEW may not be flattered at a comparison between themselves and the officials of obscure French villages. Candor, however, will induce most of us to admit we are by no means as capable of assimilating complicated ideas in a foreign tongue as in our own. The subject of this review therefore is likely to occupy a place on the shelves of our college libraries and to be much used not only by students but by those of us who are interested in the teaching of European city government.

THOMAS H. REED.

University of Michigan.

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Problems in Municipal Government. By A. Chester Hanford. (Chicago: A. W. Shaw Company. 1926. Pp. xii, 457.)

Unfortunately, the study of municipal government is not rated highly in all colleges. Where it is not, the reason is generally to be found in the merely descriptive method of treatment which makes but small demand upon the analytical or creative faculties of the students. To teach municipal government as a living process has seemed to require research facilities and special libraries which only a handful of institutions can boast. Consequently the subject often seems dry and remote; and the bridge between the class room and the spirited business of conducting a city is seldom effected. Yet most of our university students will spend their lives in cities, and there is probably no field of political life in which the college man can make his influence so easily felt as the government of his locality.

Professor Hanford has seen all this, and his present casebook is a contribution toward making college courses in municipal government more generally respected as a discipline and a training for citizenship. He has assembled ninety-seven problems, each based on an actual situation and each involving a difficulty to be solved. His method is to set forth the cases at sufficient length to establish the essential facts and to follow with questions drawing upon the information which the student has gathered from text-books and lectures. Irrespective of the value of the problems as exercises, their mere presentation throws a sense of reality about the subject matter and supplies additional collateral reading which is most welcome. The general lay-out of the book follows the arrangement of Munro's *Municipal Government and Administration*, but there are numerous page references to the other texts which make it readily available for use with any of them.

Problems in Municipal Government is a pioneer, and pioneering is courageous work. Professor Hanford would be the last to assert that the case-method technique has reached its highest development in his book. As a matter of fact, it is still in the embryonic stage, but wide utilization of the present book will afford the needed opportunity for unified experimentation along lines which will eventually recast the teaching of government, as the teaching of the physical sciences has been revolutionized during the memory of many now living.

It is not to be expected that all the problems will prove of equal merit. Occasionally the questions are little more than a review of the case-presentation which has just been read. Since the subject is not an exact science, many of the problems call for nothing more than an opinion (an

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informed opinion if the teacher is not asleep) as to what should be done in the given circumstance. Probably this is as far as we can go at present; let any one who doubts this try to construct some problems of his own.

Sometimes the statement of the case is in itself leading, and the bright student will have no difficulty in deciding what cue to take in answering the questions. This is particularly true of the questions of the "Should" type, e.g., "Should the constitution of Pennsylvania have been amended to provide that election officials be appointed rather than elected?" But again it should be said that it is difficult to set forth two sides of a question, even to supply mental setting-up exercises for students, if there is only one side to it.

To the present reviewer the problems on the legal and the administrative aspects of city government seem to offer the most to bite on. This is because the matter is less speculative and more concrete than the field of political structure and machinery. Such problems as those involving the legality of certain ordinances, the difficulties of Detroit metropolitan government, Cincinnati's employment policy, and the organization and control of police departments, will require more thought from the care-free student than the mere absorption of text-book facts.

The present reviewer is glad that Professor Hanford's experience with the problem method is now available to all. It will be a help in time of need to many who are teaching municipal government, and it will stimulate others to think along the same lines. Perhaps some are now living who will see the development of a real laboratory method in local government. Text-book problems in chemistry are more fruitful when worked out in a laboratory with the physical materials at hand. In like manner, a problem in zoning is best worked out in a zoning laboratory, i.e., arrangements permitting the students to prepare a zone plan for their city. And the class which is required to apportion benefit assessments for some projected public improvement and to develop a legal procedure for levying the tax will begin to understand special assessments.

Some day our colleges will maintain laboratories in government, and to aid the coming of this happy time we hope that Professor Hanford's casebook will have wide adoption. For the present, teachers who wish to tone up their courses in municipal government, and to bring the future leaders of city life into touch with the scientific treatment of the difficulties which their cities will face, will do well to avail themselves of it.

H. W. Dodds.

Princeton University.

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Land Planning in the United States for the City, State, and Nation. By HARLEAN JAMES. Land Economics Series. (New York: The Macmillan Company. 1926. Pp. xxx, 427.)

Land planning is the attempt to discover the best use of land in any given case and to secure development of land for that use. By emphasis on the study of land uses, Miss James has broadened the scope of city planning principles to include their application to the land problems of the state and nation.

The major portion of the book deals with city planning. The material is similar to that contained in many other pamphlets, reports, and books, but is presented in a condensed and readable form which should make this volume particularly useful as a textbook. There are frequent quotations from those technically engaged in city planning, but throughout a general viewpoint is maintained. As might be expected in a book by the secretary of the American Civic Association, there is a welcome emphasis on the part to be played by private citizens and landowners in city planning endeavor, and particularly in planning the future of the nation's capital.

The conventional method of approach to the subject of city planning dictated that emphasis should be placed first on communication and transportation and second on the treatment of public and private lands. It is regrettable that the author should have felt bound to follow this conventional course instead of pursuing the way blazed out in the preface and introduction. If land use was to be the theme, would it not have been more logical to reverse the customary order and to put zoning and the public uses of land ahead of discussion of communication?

In a preface to this latest addition to the series of volumes on problems of land economics, Professor Richard T. Ely tells us that "at first, the book was conceived of as a book on city planning." But it is more than that. The chapters on national and state planning are particularly suggestive. The subjects, however, are so enormous that one hundred pages can only give an idea of the kind of problems that are involved. The story of the Michigan land economic survey is especially illuminating in this regard.

One chapter of the book is headed "Putting Land to its Proper Use." That is the purpose of land planning. To those familiar with the customary definition of landscape architecture as "the art of fitting land for human use and enjoyment," it might seem that land planning is but a new name for landscape architecture. The landscape architect has his contribution to make in the solution of land planning problems, but

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the work of the architect, engineer, sociologist, and economist is needed also. Most of all, the interest of the citizen is needed; for without recognition of the advantages of planning in advance by the general public, few plans are likely to be carried out.

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National Capital Park and Planning Commission,
Washington, D. C.

Les Formes du Gouvernement de Guerre. BY PIERRE RENOUVIN. (New Haven: Yale University Press. 1925. Pp. xii, 185.)

Professor Shotwell is to be congratulated upon having obtained the services of Professor Renouvin in preparing this new monograph for the Carnegie Endowment's *Economic and Social History of the World War.* In this excellent study the author, drawing heavily upon the archival material under his custody in the Bibliothèque-Musée de la Guerre, has done for France what Professor Keith so admirably did in his *War Government in the Dominions.* The work is a first attempt at an historical appraisal and synthesis, from first-hand materials, of the development of French political institutions under war-time conditions, and Professor Renouvin has acquitted himself extremely well, producing a finished, critical, and authentic work of a high order.

After an initial survey of the salient features of French institutional and constitutional development under the Third Republic, which resulted in the dominance of the chambers and the enervation of executive authority, the author attempts to disentangle the effects of the war on the framework and functioning of the government. He discusses, in turn, the relations of the government to the citizenry at large, to the public services and administration, and to Parliament.

When war came, it resulted in the suspension of individual guarantees, the controlling of public opinion, and the marked extension of executive authority into the sphere of economic life. From August 2, 1914, until October 12, 1919, France found her liberties restricted, her press gagged, and her military tribunals exercising extremely wide powers. The rôle of the military authorities tended, however, to decrease as the war went on and to become subordinate to civil authority.

In the economic sphere, the government took over almost all activities and virtually extinguished private enterprise. This involved an utterly unprecedented growth of public services, with much senseless reduplication which the cabinet vainly endeavored to eliminate; new ministries were created and modified to command support in the cham-

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bers for successive cabinets; adequate liaison between the ministries proved practically impossible until special coördinating commissariats-general were established under Clemenceau. The collaboration of the ministers with the captains of industry, on the other hand, was much more fruitful!. The constitutional forms of executive coöperation included ministries without portfolio, the creation of special ministers of state—the only constitutional innovation—which proved both transitory and ineffective, and the establishment of the Comité de Guerre, a long-range and wholly inadequate imitation of the British war cabinet. A cabinet secretariat to keep records of deliberations was, however, rejected as a violation of constitutional traditions.

In the initial stages of the war parliamentary life was suspended; from 1915 onward, however, the chambers sat continuously, expedited legislative procedure, employed secret sessions to interpellate the government, and increased the authority of their commissions. Only in 1917, under Clemenceau, did they accord the ministry the power of governing economic life by decree, and then only on the explicit understanding that this was a delegation, and not an abdication, of legislative authority. In matters of foreign policy, however, Parliament was rebuffed; the ministry kept the chambers in practical ignorance of diplomatic and peace negotiations, on the ground that the constitutional laws forbade parliamentary participation in an essentially executive function. By dint of this strict and meticulous constitutionalism, of this "authority within the law," Clemenceau in particular covered from Parliament the tracks of his diplomatic manoeuverings. On the whole, the French parliament gradually evolved an ever-changing and dynamic theory of its appropriate share in criticism and the final control of the administration. All this was done without formal constitutional change, Parliament refusing either to sit as a National Assembly for the duration of the war or to commit political suicide by vesting all its powers, in true Austro-Hungarian fashion, in a delegation of members of both houses. Thus, without sacrificing their formal organization to the exigencies of the war, the French chambers skirted between the Scylla of becoming a constituent authority and the Charybdis of total renunciation of power. Thereby they amply demonstrated the vitality of the constitutional structure of the Third Republic.

In the concluding portion of the work, Professor Renouvin balances the French political ledger as closed at the end of the war, and discusses in turn the newer tendencies toward regionalism and toward state collaboration with private interests as a *media sententia* between the

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excessive *étatisme* of the pre-war and war periods and the reaction to extreme economic individualism in other countries. Looking to the future, the author discusses in detail the various syndicalist and democratic programs for the reconstruction of the French government that have been put forward since the war. The latter look primarily to the strengthening of executive authority (in either president or premier or both) as against Parliament, to a clearer separation of powers, to the grant of greater regional autonomy, and to the creation of a real supreme court as the guardian of the constitution—all measures consciously imitating American procedure. On the other hand, there are not lacking sponsors of a more refined parliamentarism with functional representation, of permanent under-secretariats removed from politics, and of a greatly strengthened Council of State. In view of the unsuccessful adventure of President Millerand in increasing executive authority, M. Renouvin concludes that the Third Republic is not yet ready to experiment with ideas of strong executive government.

It is the author's conviction that France, among all of the great belligerent states, was the one which remained most faithful to her traditions and constitutional principles while adapting her frame of government to the exigencies of the World War. Certainly this holds true for the European belligerents, but it is distinctly open to question whether such would be the case if the United States is included in his characterization.

Of special interest to Americans is the author's discussion of the state of "reinforced protection" in the regions where the American Expeditionary Forces debarked (p. 32) and of the degree to which American war administration measures reacted upon French practice, forcing a centralization of imports, shipping, etc. (p. 62). Valuable features of the book are the extensive and topical index and the annexes giving the lists of ministries and ministers created or functioning during the war.

MALBONE W. GRAHAM, JR.
University of California, Southern Branch.

Fifty Years of the British Parliament. BY THE EARL OF OXFORD AND ASQUITH. (Boston: Little, Brown, and Company. 1926. Two volumes. Pp. 306, 308.)

These volumes are hardly to be called an autobiography, for although dealing altogether with events within the range of the author's memory, they are not devoted, in the main, to his own part in them. The work is

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intended to portray the happenings of an interesting era, as Lord Asquith saw them, and thus to serve as a contribution to history from the hand of a contemporary. That intent, it can be said at once, has been amply fulfilled.

The narrative begins with Gladstone's first ministry (1868) but passes rather briefly over the ensuing decade. Interesting chapters are then devoted to such divergent topics as jingoism, obstruction, the Transvaal, Ireland, Lord Randolph Churchill, home rule, and Parnell. Occasionally a new gleam of light is thrown on these matters, but on the whole, it is a rather hackneyed story that the author puts into his pages. The reader follows it with a feeling that Lord Asquith could tell more if he chose —about various dissensions in cabinets, for example.

The text-book writers since Bagehot's day have laid great emphasis upon ministerial "solidarity" in England. Lord Asquith's narrative would seem to indicate that this theory does not always square with the facts. Even at outwardly pleasant dinner-parties there may be what Sir Henry Lucy once characterized as "war to the knife—and fork."

A considerable portion of the second volume is devoted to the controversies over the Lloyd George budget of 1909, the Parliament Act, and the proposed creating of new peers. There is also a good deal about Ulster and the Irish question before the war. Finally, and in many respects the best part of the book, there is a series of essays on various features of English government. The two chapters which deal with the office of prime minister and his relations with the cabinet are especially informing, and may well be deemed authoritative. Students of English administration will be particularly interested in these last hundred pages, including the glossary of political catch-words.

WILLIAM BENNETT MUNRO.

Harvard University.

An Essay on the Origins of the House of Commons. BY D. PASQUET. Translated by R. G. D. Laffan. With a preface and additional notes by Gaillard Lapsley. (Cambridge: at the University Press. 1925. Pp. xvi, 248.)

"Dr. Pasquet's essay, which is now presented to English readers, is one of a series of unrelated works which taken together have profoundly modified our conception of the origin of the English parliament and the place it occupied in the constitutional development of the middle ages", says Dr. Lapsley in his important preface. He sketches the work done in this field since 1885, and referring to Maitland's dilemma of the House of Commons as the child of authority or of rebellion, pronounces for the

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authoritarian origin. Few, if any, scholars will now dispute this conclusion. Pasquet's essay, unfortunately long out of print, has contributed much to the passing of the Hallam-Stubbs tradition, and this excellent translation, incorporating new material by the author and by Dr. Lapsley, is very opportune. The line of argument and conclusions of the original essay are too well known to need stating here; but it must be noted that there is still too little account taken of twelfth- and early thirteenth-century background, especially the king's enormous use of knights and others in local government, for a final appraisal of royal motives in calling representatives to the center (the author is at his best in Edward I's reign); that there is no modification of the obsession that there was extension of "suit-of-court" obligation to the non-feudal classes, becoming with Edward a conscious anti-feudal motive; and that there is neglect of the principle, established in the thirteenth century, that the king was under the law—a principle not only finally appropriated by Parliament, but unquestionably of influence in its making. To mention some minor points: it is erroneous to state (pp. 214–5) that Henry III's distraint-of-knighthood orders applied only to tenants-in-chief, for this was not true in the important and perhaps earliest instance, that of 1224 (Rot. Litt. Claus II, 69); the reference to procedure in the grand and petty assizes (pp. 15–6) is confused and apparently incorrect; the oldest extant writ to assemble the county court before the itinerant justices is of 1218 (p. 15); in discussing the famous adaptation from the Theodosian Code in the clerical summons of 1295, no account is taken of similar idea and phrasing in Wendover and Matthew Paris earlier in the century (*Chronica Majora* III, 91; IV, 366–8). Pasquet welcomes the backing which Professor Pollard's recent work has given to his general thesis, but disproves the latter's contention that no assembly containing the representative elements was called Parliament before 1300.

A. B. WHITE.

University of Minnesota.

History and Social Intelligence. By HARRY ELMER BARNES. (New York: Alfred A. Knopf. 1926. Pp. xx, 597.)

The Genesis of the World War: An Introduction to the Problem of War Guilt. By HARRY ELMER BARNES. (New York: Alfred A. Knopf. 1926. Pp. xxvii, 750.)

These two books are well-typed and splendidly arranged for the convenience of the reader. The indices are more adequate than is fre-

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quently the case in works of this character, and the chapter divisions are to be commended. The style of the writer is so attractive as to rival, if not surpass, that of the facile writer whose portrait is the frontispiece for the first book, Mr. H. G. Wells. The reader is led along from essay to essay and point to point with the utmost ease; certainly the main contentions of Professor Barnes are readily grasped, and even too readily absorbed, by the interested reader. If at times details of the fields covered are lacking in clearness, the general conclusions of the author are arrived at with no lack of confidence.

The essays of the first volume are grouped under several headings: "Aspects of the Newer History," "History and Some Problems of Nationalism," "Creation Tales," "The Rise and Fall of Democracy." Of these, the first and third have a certain amount of matter original to some degree and contributing to an understanding of the topics discussed. The second contains many undeniable truths, but their force and real value are vitiated by the pertinacity with which certain theses are urged. The last division, even more than the second, expresses Professor Barnes' personal political opinions and is interesting as such rather than as a contribution to history or to political science. Many of the essays have been published, in whole or in part, in various periodicals. But "Woodrow Wilson, an Estimate," "The Cost of Democracy," "Social Science and The Future of Democracy," "The Fathers at Work, Worship, and Play," "Hunting Bolsheviki in 1798," and others, appear in print for the first time.

Professor Barnes is probably at his best in his study of the "fathers of the constitution," in which the human side of several early Americans who accomplished a good deal for the country is most strikingly described. The account of the development of the newh istorical writing (in the same volume), which treats certain writers and certain phases differently from the customary way, is most interesting and a distinct contribution to historical literature. But the essay is open to criticism. It is a matter of opinion whether Wells has made the task of the historian easier. Shakespeare did not.

While the subject matter of the two books differs, yet the outstanding feature of the first (Part II, Chap. vii) "World War Guilt" (see *Current History*, May, 1924), together with the section on the historical development of nationalism and nationalism and historical writing has a close connection with the content of the *Genesis of the World War*. The latter revises somewhat opinions stated in the former.

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The books are controversial, and even somewhat provocative, in tone. The attitude taken by the author throughout the essays of the first volume and in dealing with the various phases of his thesis in the second is assured, confident, and dogmatic. Whether he is relegating Calvin Coolidge to the rear, politically and intellectually, or dissecting Woodrow Wilson in his *History and Social Intelligence*, or lifting the war guilt from Austria and Germany and placing it upon France and Russia, matters not. Vigorously does he lay down his propositions and vigorously does he assert the vital significance and the conclusiveness of his proofs.

Both books are impressive in the amount of references cited and in the facility with which the author quotes and uses authorities. But the two are bound together also by similar faults. The author makes his facts carry too much in the way of implication, and the result is a breakdown. This fault shows itself in several ways, hard to illustrate without provoking controversies to be deprecated. But it may well seem to many that the facts presented do not warrant Poincaré being made out the arch-villain of the play. Nor would the knowledge of the Sarajevo plot possessed by Pašič render that Balkan statesman and his cabinet guilty of "plotting the assassination of the archduke" (*Genesis of the World War*, p. 167), or of even being declared accessories before the fact.

Another fault allied to the preceding is the tendency to see full and complete support from authorities cited for all the contentions made. One instance must suffice: R. H. Lord in his *Origins of the War of 1870* hardly bears out the assertions and implications of Professor Barnes concerning the French war guilt in 1870. It is, however, a matter of opinion. The author is also singularly unfortunate in some of his authorities, clinging, however, to such authorities with a persistence worthy of the best cause. Are Miss Edith Durham, Herr Wegerer, and the like, more to be relied upon than Professor Kantorowicz, Wendel, and Seton-Watson? Two of the latter he ignores when the Serbian "plot" is under fire; the other he treats quite lightly.

There is also an unfortunate tendency to reiterate to the point of weariness matters assumed by the author to be firmly established. Since, in many cases, this establishment of the point in question has not after all been achieved beyond reasonable doubt, the effect upon the fair-minded reader is decidedly disagreeable. Among such over-emphasized points are that Russian mobilization in July, 1914, made war inevitable, or "caused the war"; that France was seeking a war to recover Alsace-Lorraine; that the Serbian question was for Austria-

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Hungary exactly like the Cuban or Mexican problem for the United States, with the same justifications for intervention, etc.

Finally, we must face squarely the question as to the value of the books. This is, of course, a matter of individual opinion. Some will say that both are stimulating because of their controversial statements and contentious assertions. Some will even maintain that the torch of truth is kept alive by the fires of contention, argument, and debate. But it would seem that the time has come, not for a striking attack upon all that has been regarded as innocent, absolutely or relatively, not for an attempt to show that all we regarded as black was white (or very light gray) and vice-versa, not for an attempt to revise the verdict of public opinion (which, after all, dictated the Paris treaties), but for a well-balanced study of thoughtful, unbiased scholarship without ulterior motive, and designed only to show all the facts and without partisan argument. To use Professor Barnes' phraseology to some extent, the *Genesis of the World War* seems to reverse entirely the Versailles treaty. What we actually need is the real spirit of Locarno.

ARTHUR I. ANDREWS.

University of Maryland.

The Constitution at the Crossroads. BY EDWARD A. HARRIMAN. (New York: George H. Doran Company. 1925. Pp. 274.)

As its sub-title tells us, Mr. Harriman's volume, is "a study of the legal aspects of the League of Nations, the Permanent Organization of Labor, and the Permanent Court of International Justice." The constitution, in fact, plays a very minor rôle in the book. Provisions from it are laid alongside analogous provisions of the League Covenant, but the discussion does not gain appreciably from this procedure. Mr. Harriman regards the League as a superstate (p. 23), arguing that "power of control over its members is inherent in its very nature in every society," and that the League is "a real society of nations."[1] The argument implies either that there was no society of nations anterior to the League or that such a society was also a "superstate." Inasmuch as superstates are still few in number and comparative novelties, the characteristics of which have not been much studied outside the United States Senate, discussion about the League is not helped greatly by use of the term.

The author further advances the opinion quite dogmatically (p. 93) that a convention between members of the Permanent Organization "is not like an ordinary treaty," but rather like a compact of marriage,

[1] See pp. 137-140 *supra.* Man. Ed.

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"because the parties cannot abrogate it by mutual consent"; it "can only be superseded by another convention proposed by the Conference and ratified by the members who ratified the draft Convention." The basis of this assertion seems to be the various provisions laid down in the Permanent Organization Treaty (Part XIII of the Treaty of Versailles) for the case of non-observance of a convention by a party thereto. But there is no suggestion that a nation may not formally abrogate a convention, let alone the idea that parties thereto may not abrogate it as to themselves. Mr. Harriman forgets our handy and resourceful friend in all such cases, the "doctrine of inalienable sovereignty." It should be admitted, however, that the Permanent Organization Treaty contains a deal of clap-trap meant to placate the bolshevism of the period when it was made, which Mr. Harriman was perhaps warranted in pretending to take seriously in order to expose its logical absurdities.

With regard to the Permanent Court, Mr. Harriman advances this thesis (p. 136): "It is legally impossible for the Court, however constituted, with the United States participating or not, to administer any other law than that of the League of Nations or the Organization of Labor, including such foreign rules of law as the League or the Organization may adopt for the decision of particular cases." This is said in face of the provisions of Article 38 of the Statute of the Permanent Court, that "The Court shall apply: (1) international conventions · · · · establishing rules *recognized by the contesting states* (italics are the reviewer's); (2) international custom · · · · ; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59 (discarding *stare* decisions), judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

And by what warrant does Mr. Harriman presume to waive these provisions aside? It is on the ground that the Court is either "the judicial body of the League of Nations and the Organization of Labor," or else no court—this because, forsooth, Bouvier's law dictionary defines "court" as "a body in the government to which the administration of justice is delegated!" One is reminded of the ancient story of the justice of the peace who was remonstrated with by disgruntled counsel: "Why, Your Honor, you can't rule that way!" Whereto Rhadamanthus returned the conclusive answer: "The hell, I have!"

But it must be conceded Mr. Harriman that the Court has a hybrid character, that of legal adviser of the League, under Article 14 of the Covenant, and that of an international tribunal, under the Statute.

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It has labored manfully to date to subordinate its former rôle to its latter, and with considerable success. Perhaps the ultimate result of the Senate's fifth reservation will be to forward this wholesome development. It is obvious that the two rôles are incompatible.

Mr. Harriman writes clearly and forcefully, but with considerable bias.

EDWARD S. CORWIN.

Princeton University.

The Geneva Opium Conferences: Statements of the Chinese Delegation, and Addresses. BY SAO-KE ALFRED SZE. (Baltimore: The Johns Hopkins Press. 1926. Pp. viii, 163; Pp. x, 131.)

Among sources for the study of international relations, none is more interesting or valuable than frank expressions of opinion by men in intimate association with events. The two brochures of Dr. Sze, the highly esteemed Chinese minister at Washington, have such a character. In the former he reproduces his statements as China's chief delegate to the Opium Conferences of 1924–5; in the latter are collected five addresses delivered at intervals during the months preceding publication. The two booklets might well have been published in a single binding.

The weight of the Chinese argument at the Geneva conferences was directed at the necessity of cutting down the use of prepared opium in non-Chinese regions where large numbers of Chinese reside. It was urged that China had a double interest in this development, since the people affected were Chinese and many of them would bring the habit back to China. China's inability to stem the tide of opium-growing within her own borders was acknowledged, but asserted to be temporary and not to affect the question of principle in the policies of other states. Dr. Sze did not remind the delegates of the replies made in the early nineteenth century by foreign governments to the protests of Emperor Tao Kuang against the smuggling of opium into China, but he might have done so and might have suggested that if at that time China was wholly responsible for the prevention of smuggling across her boundaries her neighbors are responsible today for the policing of theirs. One of the best statements in the booklet is the appended letter of Mr. T. Z. Koo in which he argues for more effective measures against contraband trade. Dr. Sze is hardly fair to the missionaries in his attempt to overthrow the contention regarding the amount of opium grown in China, particularly since he has no statistics from more reliable sources to produce. His statements as a whole are admirable for their effort to envisage the arguments of other delegations, but they would have been more under-

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standable had they been presented within a somewhat more complete setting. Their principal value lies in their documentary character.

The *Addresses* deal with China's present position in international relations and consider issues involved in her demands for equality. There is naturally a considerable amount of overlapping. Dr. Sze is tired of smoothly-worded generalizations and urges that international conferences and investigations concerning China come to specific, applicable conclusions. He gives it as his sincere opinion that the abolition of special treaty privileges would prove an advantage to foreigners and points to the danger that prolonged delay will mean the loss of the good-will that a generous act would create. The concluding chapter, entitled "China's Unequal Treaties," is much the best from the standpoint of technical exposition. All, however, possess the good qualities of purity of English, concise statement, and restraint.

There is little excuse for proof-reading that spells irritation "irrigation," preceding "preceeding," follows "folows," acquiescence "acquiscence," and dealt "delt." Nor is The Johns Hopkins University usually referred to by its true name.

HAROLD S. QUIGLEY.

University of Minnesota.

Disarmament. By P. J. NOEL BAKER. (New York: Harcourt, Brace and Company. 1926. Pp. xiv, 352.)

For students of the thorny problem of disarmament, this book is an indispensable guide. Mr. Baker, a member of the League of Nations secretariat until 1922, now Cassell professor of international relations in the University of London, makes for the general reader "a straightforward attempt to estimate the importance of disarmament in national and international policy at the present day, and to face the difficulties, both technical and political," which now confront the Preparatory Disarmament Commission at Geneva.

A successful disarmament treaty, the author maintains, "must cover not only all the states which maintain fighting forces, but also all the different arms which among them they maintain." A disarmament conference must first determine what factors of military strength shall be limited; second, "there must be found some method of measuring the strength of different countries in these various factors when they are combined;" third, the conference must decide the political problem of the ratio, the relative position to be established among the nations. "In its preparation, in its negotiation, in its actual terms, and in its

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execution, it will be technically, as well as politically, the most complicated treaty ever made."

After discussing various unsuccessful proposals, as well as the existing disarmament treaties, Professor Baker offers many concrete suggestions. Indeed, with a faith that would move mountains, he shirks few if any difficulties. His ideal is the system of disarmament imposed on the vanquished Central Powers. Conceding that other nations will not voluntarily surrender so much, he nevertheless contends that "the more rigid the disarmament which is agreed, the more comprehensive the scheme adopted, the more factors of military strength with which it deals, the simpler is the technical problem to be solved."

Land disarmament seems to him possible, naval reduction relatively simple, and aërial disarmament most difficult and most important of all. "To meet the danger of surprise aggression, inherent in the existence of unlimited numbers of commercial aircraft, there should be set up a system of mutual guarantee, depending largely on aircraft for its effect. It is desirable to this end that as large a proportion as possible of the military air forces of different states should be pledged by treaty to co-operation in mutual defence."

It is not correct that "France · · · · has developed submarines much more than other countries." The League of Nations *Armaments Year Book, 1925-1926* gives the United States 129 submarines, plus one building and five authorized; Japan, sixty-nine submarines built or completing, and fifteen ordered or authorized; France, sixty submarines, plus eight building or on order; and Great Britain, sixty-four submarines, plus one under construction. Nor is it true that "Great Britain heavily outnumbers her rivals in destroyers," unless the United States be excluded from consideration.

JAMES P. BAXTER, 3rd.

Harvard University.

BRIEFER NOTICES

In *Jefferson et les Idéologues* (The Johns Hopkins Press, pp. 296) Professor Gilbert Chinard, of the Johns Hopkins University, carries forward his publication of materials illustrating the commerce in ideas between France and the United States in the last quarter of the eighteenth, and the first quarter of the nineteenth, century. *Volney et l'Amérique* and *Les amitiés américaines de Madame d'Houdetot* have already appeared; *Les amitiés françaises de Jefferson* is promised for early

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publication. The work which Professor Chinard is doing is of direct significance for every student of politics, and particularly for students of American government; for the ideas whose interchange he is tracing were primarily and dominantly political, and those who exchanged them were men in sufficiently responsible political positions on both sides of the water, or at least on the American side, to render the traffic no mere matter of academic interest, but a direct influence on practical politics. The present volume, which contains much unpublished material, chiefly from the Jefferson papers in the Library of Congress, deals mainly with Jefferson's efforts to secure the translation and publication in the United States of two works of the philosopher Destutt de Tracy, his *Commentary on Montesquieu*, and his *Treatise on Political Economy*, the latter of which Jefferson himself translated, to all intents and purposes.

A new outline of history, from earliest times to the present day, is contained in two volumes recently issued by Harper's. *The Conquest of Civilization* (pp. 715) by Professor James H. Breasted sketches human development down to the fall of Rome. A considerable part of the material, both text and illustrations, is taken from the author's earlier book on *Ancient Times*. About a third of the space is given to pre-Hellenic times, less than a third to the Greeks, and more than a third to Rome. Dr. Breasted, as always, has done this work in masterful fashion. *The Ordeal of Civilization* (pp. 768) by Dr. James Harvey Robinson, sweeps through the ages from the seventh to the twentieth century. Here, again, a substantial part of the text has been drawn from an earlier book—the author's *Mediaeval and Modern Times*. More than half the new volume, however, is devoted to the past two hundred and fifty years. The author's point of approach is indicated by his sub-title, which characterizes the book as a sketch of the development and diffusion of ideas. It is a graphic and illuminating narrative, but hardly, as the publishers' advertisement declares, "a contribution to history of extraordinary value." Dr. Robinson has contributed, in this book, very little that is new to his readers. Both volumes are well-illustrated, and there are excellent maps.

The fourth edition of Volume II of Oppenheim's *International Law*, edited by Arnold D. McNair (Longmans, Green and Co., pp. lv, 752), is a thorough revision of that standard work. Forty new sections have been added, dealing with such matters as conciliation, the Permanent Court of International Justice, reduction and limitation of armaments, domestic questions, economic boycott, neutrality and the League of

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Nations, indemnities and reparation, and other subjects whose treatment is necessary on account of the international developments since the appearance of Roxburgh's edition in 1921. Several sections have been completely revised and brought up to date (notably those dealing with arbitration under the League, settlement of disputes between members of the League, and means of regulating and controlling the newer methods of warfare); others have been relegated to the footnotes; and most of those relating to the various proposals for an International Prize Court have been omitted altogether. The bulk of the new material and of the revision thus deal with questions growing out of the establishment of the League of Nations and the World Court, and show clearly the consequent tendency of international law to provide more and more for amicable settlement of disputes. It may be significant of this development that the editor has changed the title of Volume II from *War and Neutrality* to *Disputes, War, and Neutrality*. The bibliographies and the table of cases have been materially lengthened and continue to be among the notable features of the book. Professor McNair has done his work remarkably well. The original flavor has been maintained, so that the volume remains distinctly an "Oppenheim;" and the additions and revisions have been made with such rare judgment that the book continues to be also a "living exposition of the law." Students of international law will look forward to the revision of Volume I by the same editor, the appearance of which is promised in due course.

C. A. B.

The Duke University Press has recently published two books which are of interest to students of American politics, *Loyalism in Virginia* by I. S. Harrell (pp. vii, 203) and *Origins of the Whig Party* by E. Malcolm Carroll (pp. viii, 260). Professor Harrell points out that in Virginia most of the merchants were loyalists and most of the planters supporters of the Revolution, unlike New England where the adherents of the Revolution were drawn largely from the merchant class. He also explains why after the Revolution leaders like Patrick Henry were distrustful of the Constitution and why the Virginia planters transferred their support from the Federalists to Jefferson. Professor Carroll not only explains the origins of the Whig party but also traces the history of that party down to the election of Harrison in 1840. Harrison's nomination, in the opinion of the author, was due to "the support of the western and frontier delegates as a result of a decision to copy the methods of the Democratic party" and to make the "campaign in the form of an appeal

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to popular emotion." *William Henry Harrison* by Dorothy Burne Goebel (Indiana Historical Collections, Vol. XIV, pp. xi, 456) presents in detail the life of the first Whig president. Mrs. Goebel agrees with Professor Carroll in her conclusion that "there was no appeal of demagogy that did not find a place in the campaign of 1840." She also points out that Harrison was a man of refinement and a scion of the Virginia aristocracy who lived on a generous scale in a mansion at South Bend instead of in a log cabin. The fact that a wing of this mansion had originally been a log cabin was used as the basis for the campaign stories. The book is written with a sense of fairness, is readable throughout, and the emphasis upon politics makes it a valuable contribution to American party history. That the author has left no stone unturned in her search for information is shown by the numerous references and a bibliography of about forty pages.

The available works on Lincoln have been greatly enriched by a volume entitled *An Autobiography of Abraham Lincoln*, compiled by Nathaniel Wright Stephenson (The Bobbs-Merrill Company, pp. 501). Following the plan of the late R. M. Johnson's *The Corsican*, Mr. Stephenson allows Lincoln to tell the story of his own life by gathering together from a wide variety of sources extracts from his letters, speeches, and conversations. Instead of cluttering the book with footnotes, the editor has given a ten-page table of sources in which the origin of every paragraph is set forth. The continuity of the narrative is preserved by the insertion of brief sentences written by the compiler and printed in italics to distinguish them from the writings of Lincoln. The book shows throughout painstaking care, a thorough knowledge of the subject, and a scholarly insight into the career of Lincoln. Being a compilation, the work will perhaps never gain for the editor the recognition given to a different type of book, but Mr. Stephenson has already established his reputation by his earlier work on the personal life of Lincoln. In the opinion of the reviewer, the present volume is one of permanent value, equal in rank to any of the single-volume biographies and indispensable to one who wishes to have a complete understanding of Lincoln without going to the thirty-five sources consulted by Mr. Stephenson.

An interesting addition to one-volume histories of the United States is Thomas J. Wertenbaker's *The American People: A History* (Scribner's, pp. 406). The entire colonial period is covered in sixty-two pages, which reduces the narrative to a mere sketch. The era since the Revolution

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gets somewhat more adequate treatment, but the demands of space compel a great deal to be taken for granted. In his preface the author comments on the futility of "writing history which only historians read." Yet it is difficult to see how anyone who does not already know American history pretty well can get anything like the full value that is in this book. Fundamental forces and developments are portrayed in a few broad and masterly strokes, sometimes with great vividness, as in the chapter on the constitutional convention of 1787. But will the average reader get any enduring grasp of the convention's difficulties, compromises, agreements, and achievements from these twenty pages? It is at least a moot question.

The United States and France; Some Opinions on International Gratitude, selected with foreword by Dr. James Brown Scott, is an interesting and well-made book from the Oxford University Press (American Branch, pp. lxxii, 175.) It reprints, from the originals or from photographic copies, an extract from the Declaration of Independence; the letter of Franklin, Deane, and Lee to the Committee of Foreign Affairs, December 18, 1777; the treaties of amity and commerce, and of alliance, of February 6, 1778; the loan contracts of July 16, 1782, and February 25, 1783; and the definitive treaty of peace with Great Britain, recognizing the independence of the United States. The body of the work reproduces seven articles, five of them by Jared Sparks, dealing principally with the conduct of Vergennes toward the United States. In the foreword the distinguished editor points out that "never was there greater frankness on the part of a prospective ally; never was there greater generosity, treating weak and struggling colonies upon a footing of equality; and never was there greater constancy on the part of an ally until the purpose of the alliance had been accomplished."

The Colorado River Compact, by Reuel Leslie Olson (published by the author, pp. xxiv, 527) is an important study of a significant interstate agreement, with due consideration of the constitutional and political issues involved. Dating from 1922, the compact is a working arrangement proposed for seven southwestern states having a direct interest in the use of the water of the Colorado River. It has not been ratified by all of the parties, and consequently is not as yet operative. But the discussions that have attended it thus far are of much interest for students of American government and constitutional law. The author, however, gives little attention to the international complications and overlooks the problems of political control of such administrative machinery as might

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be established by the compact. Condensation and rearrangement of material would have improved the book. About half of the volume is devoted to minutes of the Colorado River Commission and other documentary and illustrative materials.

In *The Indeterminate Permit in Relation to Home Rule and Municipal Ownership* (Public Ownership League of America, pp. 99), Dr. Delos F. Wilcox argues that state regulation of utilities "as an exclusive or dominant policy has broken down" and urges that "the road to utility service in the best sense of that term is through municipal home rule, and the road to municipal home rule is through public ownership." The indeterminate permit, adopted as an opening of the door to public ownership, is pronounced "a delusion and a snare."

Women Police, a Study of the Development and Status of the Women Police Movement (Frederick H. Hitchcock, pp. xxii, 337) was written by Miss Chloe Owings, of the Bureau of Social Hygiene, at the instance of the International Association of Policewomen. It surveys the beginnings and spread of the employment of policewomen in various parts of the world and considers the problem of training women for effective service on a police force. There is a table showing cities in the United States having police matrons or women police, or both.

The Diplomatic Correspondence of the United States concerning the Independence of the Latin American Nations is the descriptive title of a three-volume work by Dr. William R. Manning of the Department of State. These volumes, totaling nearly 3,000 pages and more than 750 documents, are issued by the Carnegie Endowment for International Peace through the Oxford University Press. Many of the documents have not before been published and are of great value in affording an understanding of the important period of South American history, 1810 to 1830, to which they refer. Light is thrown on Canning's policies and the Monroe Doctrine, and a better understanding of the influence of Bolivar is afforded by the material which is presented.

The text of the edition of 1594 of *De Legationibus* by Alberico Gentili has been issued by the Carnegie Endowment for International Peace, with an introduction by the late Professor Ernest Nys, and a translation by Professor Gordon J. Laing. The name of Gentili is in late years closely associated with that of Sir Thomas Erskine Holland, long professor at Oxford, who until his recent death held an exceptionally distinguished position in international law. For more than fifty years

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Professor Holland had warmly commended the work of Gentili, and he lived to see the merit of Gentili recognized. These two volumes are in the usual excellent form of the Classics of International Law.

L'Exterritorialité, by Baron Alphonse de Heyking (Rousseau & C^ie^, Paris, pp. vii, 219), is an excellent survey of this subject. The author traces the historical development of the doctrine of exterritoriality, presents the views of the important international jurists with respect to its validity, and discusses its application to particular situations. This last phase of the book is especially valuable, as the author discusses not only the usual exemptions from the territorial jurisdiction of a state, but also the more recent problems of exterritoriality arising out of the establishment of the League of Nations, the Permanent Court of International Justice, and other newly created international organs. An extensive bibliography and a carefully prepared index are appended. The book should serve a very useful purpose as a comprehensive manual on the subject of exterritoriality. C. A. B.

Under the auspices of the research department of the Foreign Policy Association, Mr. Savel Zimand has prepared a useful study of *State Capitalism in Russia; the Soviet Economic System in Operation, 1917–1926* (pp. 77). Official Soviet statistics have been employed wherever possible, with due allowance for discrepancies that appear in the figures given by the various Soviet offices. It is pointed out that, notwithstanding the refusal of the United States to extend even *de facto* recognition to the Moscow government, the proportion of Russian imports coming from this country rose from seven per cent before the war to almost thirty per cent in 1924–25.

Paul H. Clyde's *International Rivalries in Manchuria, 1689–1922* (Ohio State University Press, pp. 217) is a dispassionate and balanced narrative of international relationships in an area which for several decades has served as a principal battleground for rival powers in the Far East. The obvious sources have been used diligently and the story is well told, though without bringing to light much that was not already known. There is a good working bibliography.

Professor William W. Pierson, of the University of North Carolina, has revised and enlarged his *Hispanic-American History; a Syllabus* (Chapel Hill: University of North Carolina Press, pp. 169). Each of the ten sections consists of an outline of a main division of the subject, with somewhat extensive reference lists.

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The *Second Annual Report* of the Permanent Court of International Justice is a volume of nearly four hundred pages, containing a résumé of the judgments delivered and advisory opinions given by the Court during the period from June 15, 1925 to June 15, 1926, and the text of all administrative decisions taken by the Court since its foundation. Several chapters describe the organization of the Court, its statutes and rules, its jurisdiction and its finances; and a bibliography of 160 pages lists publications relating to the Court and its affairs.

The Preliminaries of the American Revolution as Seen in the English Press, 1763–1775 (Columbia University Press, pp. 216), by Professor Fred Junkin Hinkhouse, is Number 276 in the Columbia University Studies in History, Economics, and Public Law. Based principally on six magazines and twenty-two newspapers, this monograph gives a useful survey of British opinion on American affairs, as expressed in the press. The author points out that "not until the punishment of Boston became a political issue did the Boston Tea Party cause very much discussion, and at no time did the papers indicate a greater unanimity regarding the American question than at other periods."

The Civil War and Readjustment in Kentucky, by Ellis M. Coulter (University of North Carolina Press, pp. 468), tells for the first time the whole story of Kentucky's part in the Civil War and the reconstruction period. The author explains how Kentucky developed her peculiar neutrality doctrine before entering the war, describes the political developments during and after the war, and shows the influence of sectionalism upon politics in a border state. The book should be useful as throwing light upon the workings of the party system during the period covered.

James C. Malin's *Interpretation of Recent American History* (Century Company, pp. 175) deals in brief review with the period since 1865. The author is concerned more particularly with the social activities of the federal government and endeavors to show the "influence of behavioristic psychology" upon political development. The book is intended for use as a supplement to college texts in recent American history. There is a useful bibliography.

The Historical Background of the American Policy of Isolation by J. Fred Rippy and Angie Debo (Smith College Studies in History, Vol. IX, Nos. 3 and 4, pp. 165) gives an account of the evolution of that policy from 1775 to the issuance of the neutrality proclamation in 1793

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and concludes that the proclamation was "the natural expression of a policy that had long since come to be regarded as a fundamental principle of American intercourse with foreign nations."

A new volume in the Borzoi Handbooks of Journalism is Gerald W. Johnson's *What is News* (Knopf, pp. 98). The book deals, in the main, with newspaper policy, how it is determined, with the newspaper's relation to the public, and with news values in general.

The Minnesota Historical Society has published the third volume of *A History of Minnesota* (pp. xiii, 605) by William Watts Folwell, president emeritus of the University of Minnesota. The work covers the period from 1865 to the present time. Except for the first few and the last chapters, the author has presented his material by gubernatorial administrations and the chief emphasis throughout is upon political developments. There are nineteen appendices, one of which contains a twenty-page account of the Non-Partisan League and the Farmer-Labor party. The book is written in the same readable and vigorous style as the other volumes which have previously been noted in the REVIEW and contains a vast store of information which is useful for the student of state government and politics.

The People Next Door: An Interpretive History of Mexico and the Mexicans, by George Creel (The John Day Company, pp. 418) is exactly what the title suggests and is of special interest just now as an attempt to give the historical background and causes of the present disturbed condition of that unfortunate country. On the whole, the book is sympathetic toward Mexico, although Mr. Creel takes great delight in proving that the rebellion of Texas was not engineered in the United States. He does not try to gloss over the excesses of the Mexicans or try to paint the country as a land of romance, but tries to picture "the long centuries of oppression, betrayal and stark wretchedness." His plea is for patience and sympathy. Written by a newspaper man, the history is vivid, but he does not despise footnotes, and there is an excellent index and an appendix. *Diplomatic Relations Between the United States and Mexico Under Porfirio Diaz, 1876–1910*, by Pauline S. Relyea (Smith College Studies in History, Vol. X, No. 1) describes the efforts of Diaz "to establish better relations between the United States and his own country in order to secure her help in developing Mexico."

Thiers and the French Monarchy, 1797–1848, by John M. S. Allison (Houghton Mifflin Company, pp. xi, 379), is a book by a scholar which

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other scholars will delight and approve. It has all the earmarks of erudition and care. The notes are profuse and happily gathered together at the end of the chapters instead of cluttering the pages. There is an extensive bibliography and sources are freely quoted. This is the first biography of Thiers and therefore of special interest, but his biographer does not lose his head in the excitement of being the first to have discovered him. Throughout there is the judicial calm of the scholar, even if his hero is not as alive as he might be.

Europe Since Waterloo, by William Stearns Davis (Century Company, pp. 965), is a comprehensive, well-balanced, and skilfully-written history of the great European powers during the years since 1815. As becometh a practiced novelist, the author gives more attention to personalities than to movements. He might well have called his book "From Bonaparte to Mussolini." At any rate, it embodies a fine example of clear and forceful presentation—in all respects a valuable addition to our surveys of modern European history.

The new (illustrated) edition of *The Outline of History* by H. G. Wells (Macmillan, pp. 765) is not simply a reprint of the original brought down to date. Several new sections have been added, especially on the history of music, architecture, and sculpture. Other portions have been considerably recast. There are over eight hundred illustrations.

A new edition of Professor William B. Munro's *Aids to the Study of European Governments* (Harvard Coöperative Society, pp. 251) has recently been issued. The book, which is intended to form supplementary reading in college classes which use the author's *Governments of Europe*, contains various leading documents relating to British government (such as the Bryce Report, selections from the Montagu-Chelmsford Report, and the constitution of the Irish Free State), likewise English translations of the French, German, Italian, and Russian constitutions.

In *Free Thought in the Social Sciences* (Macmillan, pp. 288) J. A. Hobson investigates the influences which handicap the social scientist in the formation of disinterested conclusions and predispose him to accept theories in harmony with the interests of his own particular social group. The work takes the form of a criticism of some of the fundamental principles of different economic, political, and ethical theories. Especially in his treatment of politics and ethics the author

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devotes much attention to the misuse of social and psychological axioms by the unseen powers which are supposed to control human society.

My Own Story, by Fremont Older (Macmillan, pp. 340), is the frank recital of a newspaper-man's experiences in San Francisco both before the Schmitz-Ruef régime and after it. It is an amazing story, all the way through, and told with great vividness. As a contribution to the literature of practical politics, intensely practical, it deserves high rank. The reader who wants to know just how the game is played, when Greek meets Greek, will get what he is looking for in this book.

A somewhat forgotten chapter in American political history is revived by Charles H. Armitage in his volume on *Grover Cleveland as Buffalo Knew Him* (Buffalo Evening News, pp. 278). The book deals in gossipy fashion with Mr. Cleveland's earlier political experiences as sheriff and as mayor. It gives a good picture of urban politics in the mid-Victorian era.

It is enough to say that H. L. Mencken's *Notes on Democracy* (Knopf, pp. 212) is strictly Menckenian in every paragraph. There is no particular theory of democracy to be expounded, but all existing ideas relating thereto are fair targets for the author's colorful rhetoric. The book is full of good epigrams and pat phrases, but not of enlightenment for those who are in pursuit of the truth.

Two of the recent volumes in the Institute of Economics Series of interest to students of government are *Tax-Exempt Securities and the Surtax*, by Charles O. Hardy (pp. xx, 216), and *World War Debt Settlements*, by H. G. Moulton and Leo Pasvolsky (pp. 448). Both are published by the Macmillan Company. In the former volume the author reaches the conclusion that industry has not been seriously handicapped in securing capital for normal expansion on account of the competition of tax-exempt securities and that, contrary to the opinions of many, tax-exemption has not encouraged state and municipal extravagance. In fact it is the author's belief "that the effect of the abolition of tax-exemption on state and municipal expenditure would not be great" and that "the withdrawal of the privilege from states and municipalities would do more harm than good."

In *The Oil War* (Harcourt, Brace and Company, pp. 267) Anton Mohr, lecturer in political geography at the University of Oslo, describes the development of the great oil companies and also tells how "the political

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struggle for oil, which began in a small way in the years immediately preceding the war with the disputes between British and Americans regarding the Mexican oil fields, has assumed a universal character since 1918." Especial attention is given to the fight in the Near East and Central America, and the author points out that the chief belligerents are on the American side the Standard Oil Company with its many subsidiary companies and on the British side the Royal Dutch-Shell, Anglo-Persian, and British Controlled Oil fields, with their subsidiary companies. It is needless to say that the author predicts that the struggle for petroleum will lead to real wars in the future.

A new volume in the Handbook Series is entitled *States, Rights*, by Lamar T. Beman (The H. W. Wilson Company, pp. 361). The book contains a wide assortment of materials on the question whether the powers and functions of the national government should keep on increasing. As in other volumes of the series, there are useful bibliographical lists.

The Urban Community, edited by Ernest W. Burgess (University of Chicago Press, pp. 260) contains a reprint of various papers read at the 1925 meeting of the American Sociological Society. They cover a wide range of interesting topics from "The Nature of Human Nature" to "A Redefinition of the City."

Prohibition at its Worst, by Irving Fisher (Macmillan, pp. 255), is not, as its title might imply, an onslaught upon the Volstead Act. It is a book which tries to tell what prohibition has accomplished and concludes that even at its worst there is much to be said for it. National prohibition, the author believes, can be enforced.

To the shelf of one-volume histories of civilization may now be added a *History of Human Society* (Charles Scribner's Sons, pp. xii, 512) by the sociologist, Frank W. Blackmar. In this book, which seeks to define progress and show that it has taken place since prehistoric times, intellectual, social, and economic changes are sketched. The work is elementary, conventionally idealistic and ideological, and makes no pretense at originality. Mr. Blackmar is much impressed by the achievements of the "Nordic branch of the Aryan stock."

Mr. Daniel Chauncey Brewer is gravely perturbed by what he terms *The Conquest of New England by the Immigrant* (Putnam's, pp. vi, 369). Writing in a style reminiscent of senatorial oratory of an earlier day, he

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warns "Americans" that "their vested interests, their liberties, and the hopes of their progeny are at hazard." All may be saved, however, if only such "Americans" as still remain in New England will heed Mr. Brewer's plea, exploit the latent respect of the foreigners, and "provide the sort of magnetic leadership which will make Yankee culture permanent."

England, by Dean Inge (Scribner's, pp. 302), is a gloomy book for all save Anglophobes. The author believes that the heyday of Albion is drawing to a close, that England's rôle as a world power will not endure much longer, and that the prospect is most depressing to all lovers of the sceptered isle. The book is certainly frank and fearless; the author's style is vigorous and his views are stimulating, even if his jeremiads are not altogether convincing.

An endeavor to provide material for "a new type of orientation course" is embodied in *A Gateway to the Social Sciences* (Ginn and Company, pp. 384) by Professors Arneson, Barnes, Coulter, and Hubbart, of Ohio Wesleyan University. The volume is a composite of chapters on paleontology, anthropology, psychology, sociology, history, economics, political science, international relations, and educational theory. Thus, as the authors say "the fundamental unity of all the social sciences is recognized."

Mr. P. J. Thomas' *Mercantilism and the East India Trade* (P. S. King, pp. xviii, 176) is a valuable study, made from original and hitherto little-used sources, of the beginnings of protectionism in England in the latter part of the seventeenth and the early part of the eighteenth centuries. The book is primarily a contribution to the history of economic thought, but also illustrates the political influence of private business interests.

The Theory of International Prices, by James W. Angell (Harvard University Press, pp. 571) is a critical discussion of the history of European thought on this subject, with a restatement of the theory in the light of present banking and financial conditions.

Liberalism and American Education in the Eighteenth Century, by A. O. Hansen (Macmillan, pp. 307), is a study of the degree in which American life and institutions were influenced by the liberal movements of the eighteenth century.

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After the death (in 1918) of the eminent anthropogeographer, Paul Vidal de la Blache, his son-in-law, E. de Martonne, found among his papers manuscript and notes from which he constructed a volume now translated by Mrs. Millicent T. Bingham under the title, *Principles of Human Geography* (Holt, pp. xvi, 511). Political scientists as well as economists, sociologists, and historians should find many suggestions in this book.

Augustin Cochin, 1823–1872 (2 vols., Paris: Blond and Gay, pp. 371, 398) is a collection of letters of this French publicist, with a biographical introduction by Henri Cochin. The letters cover the period from 1841 to 1871.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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